

289
AN EIGHTH LETTER

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TO THE PEOPLE OF ENGLAND *People*

ON THE *8139 bbb 8*

POWER OF DISQUALIFICATION

IN THE

COMMONS;

In which it is shewn,

That the Subject is not sufficiently understood by
those who have written on either Side of the Question,

————— Veterum volvens monumenta virorum,
Audite ô proceres, ait, et spes discite vestras.

VIRGIL, *Æneid.*

L O N D O N,

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AN
EIGHTH LETTER
TO THE
PEOPLE OF ENGLAND, &c.





AN

EIGHT HILL

TO THE

PEOPLE OF ENGLAND & SCOTLAND



ON THE
POWER OF DISQUALIFICATION
IN THE
COMMONS.

DURING this long contest, both in speech and writing, respecting the illegality of disqualifying Mr. Wilkes, it appears to me, that neither the speakers or writers on either side of the question have founded their arguments on that ground which can alone support their different opinions. Instead of recurring to the consideration of that authority, which primarily imparts validity to parliamentary proceedings in this case, they have concluded, that precedents are of themselves the sole authoritative source of acting in the house of commons; and that where there is no precedent to be adduced, that in such instances there is no lawful authority for any resolution which the house may vote. But this position is subversive of that idea which is inseparably annexed to the word precedent. It invariably supposes a right in that assembly, or those persons who have made it, antecedent to the precedent, and adequate to the exertion of that power on which it was constituted; and when it is divested of that attribute, it consequently follows, that precedent imparts no obligation to be observed on future occasions.

The advocates, in favour of Mr. Wilkes, insist on the illegality of his being expelled and disqualified: because, as they assert, the house of commons

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mons are bound, by the circumstances of former precedents, in all resolutions of this nature; and that there exists no precedent, perfectly corresponding in every particular, on which this vote of disqualification can be legally sustained. The gentlemen who are of a contrary opinion, and who support the legality of that disqualifying vote, seem to have yielded too easily to this imagined efficacy of precedent; and arguing on the same bottom, have adduced such precedents, and thence deduced such inferences, as they pronounce to be sufficient by which to justify the conduct of the commons in this resolution. As there are arguments which have occurred to me, not hitherto observed by the writers on either side of this question, I shall presume to offer them to your disquisition; and though no man shall accede to my opinion, in consequence of what I shall deliver, it will prove at least that my conduct, in this case, is not adopted either in consequence of an implicit obedience to the sentiments of other men, to support the cause of party, or without endeavouring to examine the subject by my own faculties.

Animated by the honest intention of discussing and determining this question, with as little prejudice and prepossession as I am capable, I shall fairly state the principles and positions of those gentlemen who have disapproved of this disqualifying vote. And these are, as I recollect, that those precedents which are not similar, in all points, can afford no authority for disqualifying Mr. Wilkes. That Mr. Wilkes being not ineligible by law, is eligible of common right. That the house of commons cannot by their vote render Mr. Wilkes ineligible. That Mr. Wilkes cannot legally be twice punished for the same offence. That the house of commons cannot make their own powers,

powers, because they did not make themselves. That the freedom of election is violated, by not admitting as a member, the person whom the electors chose. And that the liberties of the people are endangered by this disqualifying vote of the commons.

These are, I think, all the principles and positions which the opponents of this resolution have advanced, and on which they have grounded all their arguments against it. I shall therefore endeavour to disprove the rectitude and truth of all of them, and not by a long series of arguments attempt to refute that reasoning which they have founded them on. For if the ground will not sustain the building, the latter falls of course, and it would be idle to demolish that fabric piecemeal, that can be destroyed by one single explosion. I shall therefore lay the foundation of what I have to offer, on that very spot which all parties agree to be its real situation: and then I shall candidly examine what ought to have been the result of the commons respecting the Middlesex election. But previous to this enquiry, it seems expedient to delineate the parliamentary constitution of this realm, as far as it is requisite for the fuller explanation and evidence of what I have to offer.

The supreme legislative power of this realm consists of a king, lords, and commons; and these constitute a parliament. And as I shall quote Sir Edward Coke in refutation of what the advocates of Mr. Wilkes have offered, from him I shall recite, that "the power and jurisdiction of the parliament for making of laws, in proceeding by vote, is so transcendant and absolute as cannot be confined, either by causes or persons, within any bounds, *huic ego nec metas rerum nec tempora pono.*"

In consequence of this constitutional power, "it
 " hath sovereign and uncontroulable authority of
 " making, confirming, enlarging, restraining, abro-
 " gating, repealing, reviving, and expounding of
 " laws concerning matters of all possible denomi-
 " nations, ecclesiastical or temporal, civil or mili-
 " tary."

The laws of the realm are divided into statute law, the law and custom of parliament, the crown law, the ecclesiastical, civil, and canon law, together with some other subdivisions which it is useless to name on this occasion.

" And this is to be known, that the lords in
 " their house have power of judicature, and the
 " commons in their house have power of judica-
 " ture; and as every court of justice hath laws
 " and customs for its direction, so the high court
 " of parliament suis propriis legibus et consuetu-
 " dinibus, subsists. And this is best understood
 " by reading the judgments and records at large,
 " and the journals of the house of lords, and the
 " book of the clerk of the house of commons,
 " which is a record, and it is affirmed by act of
 " parliament." And to these I shall appeal in
 support of what I have to offer.

" It is *lex et consuetudo parliamenti*, that all
 " weighty matters in any parliament, moved con-
 " cerning the peers of the realm, or commons in
 " parliament assembled, ought to be determined,
 " adjudged, and discussed by the course of par-
 " liament; and not by the civil law, nor yet by the
 " common laws of this realm, used in more infe-
 " rior courts: which was so declared to be *se-*
 " *cundum legem et consuetudinem parliamenti*,
 " concerning the peers of the realm, by the king
 " and all the lords, spiritual and temporal. And
 " the like, *pari ratione*, is for the commons, for
 " any thing moved or done in the house of com-
 " mons;

"mons: and the rather for that, by another law
 "and custom of parliament, the king cannot take
 "notice of any thing said or done in the house of
 "commons, but by the report of that house. And
 "every member of parliament hath judicial place,
 "and can be no witness; and this is the reason
 "that judges ought not to give any opinion of a
 "matter of parliament, because it is not to be de-
 "cided by the common laws, but *secundum legem*
 "*et consuetudinem parliamenti*; and so the judges
 "in divers parliaments have confessed." For if
 the judges by the common law could determine
 the elections of the commons, there would certainly
 exist a practicability of filling the house as the
 minister should direct: for then the obnoxious
 might be disqualified in all contested elections, and
 the sycophants of power constantly made the sitting
 members. Is this the legality which those advo-
 cates are labouring to establish?

The house of lords and commons severally have
 this original maxim, that whatever matter arises
 concerning either house of parliament, can be de-
 termined in that house to which it relates, and *no*
where else. The lords will not suffer the commons
 to interfere in the election of a peer of Scotland;
 the commons will not allow the lords to judge of
 the election of a burgess. Nor will either house
 permit the courts of justice to examine the merits
 of either. But the maxims, on which they proceed,
 rest entirely in the breast of each house respec-
 tively, and are not defined and ascertained by any
 particular law.

The house of commons does, therefore, at
 once, possess both a legislative and executive au-
 thority in all those matters which may arise con-
 cerning themselves. It includes a legislative pow-
 er, because the maxims, and the methods on which
 they

they proceed, are not defined and ascertained by any particular law, and are resident in themselves alone.

It includes the executive power, because those matters being to be examined, discussed, and adjudged in no other place, and this court having no judicial magistrates to carry their laws into execution, as are appointed for the executing the laws of the whole legislative body, they must, of necessity, themselves be the executors of their own determinations. For to what purpose can resolutions be made, without a lawful power of carrying them into execution? Hence it is evident, that the court, before which such matters can only come; which can alone decide upon them; and in whose breasts the maxims and the methods, on which they proceed, entirely rest, undefined, and unascertained by any particular law, must be invested with legislative authority; and, as that power, they must necessarily enjoy the rights which are inseparable from legislation; and that, having no officers subordinate to execute their resolves, they must also possess the executive authority also; for a legislative power without an executive, is an impotent authority, without energy or obligation.

It appears also, that the law of the commons, if not superior, is independent of the common law, because the commons have power of judicature; and as the king cannot take notice of any thing said or done in that house, as the executive power of the laws, he cannot authorise his servants, the judges, to take cognizance of that which he cannot know. And this is the reason for the preceding opinion of the judges, that any matter of parliament is not to be decided by the common laws, but according to the law and usage of parliament: for they knew that the law

of parliament is one of constitution, equally with that of common law. But the statute law being that law, in the instituting which the commons have consented, is superior to every other ; and as it invalidates the common law, so does it also that of the two houses. For this reason it is, that the common law, supreme and extensive as it may be in its power over the community, is not universal. It extends not to the confirming, enlarging, restraining, abrogating, repealing, expounding laws concerning matters relative to the two houses : that can be effected but by the whole legislature. And it seems, from practice, as if, when not specifically mentioned and described, that the commons deem themselves, respecting their own affairs, unobliged by the whole legislative authority, excepting in those concerning treason, felony, and breach of the peace. That the members of either house are not subjected to like conditions of the common law, with the other constituents of the realm, is evident ; for not a representative can be arrested, or taken into custody : his menial servants cannot be arrested : no entry can be made on his lands ; nor can his goods be distrained or seized, without a breach of the law of parliament : to all which proceedings the other subjects are exposed, by process of the laws. These, and innumerable other instances of the law of either house being superior to the laws of the legislature, are to be found. It fines and commits to prison all those whom they may deem to have acted disrespectfully to a member, or to the house. These are laws of parliament, in opposition to common law. But on what authority a writ of Habeas Corpus is denied to the subject, who may be taken into custody by power of the commons, I know not. It cannot be on the reason already related,

related, that the judges cannot be authorized by the executive power to carry the common law into execution; because this writ of right is by statute law. And it seems extremely singular that the commons, who have consented to this statute of the Habeas Corpus, should think themselves superiour to the law which they have enacted, without excepting that right to themselves: and that the judges should not grant that writ, to every subject who applies for it in the above situations; since the power that made the law unexceptionably enables the executors of it to carry it into execution. In fact, though the laws and customs of parliament, which are consecutive of its legislative authority, are to be learned out of the rolls of parliament, and other records and precedents, and from continual experience; yet these can no more limit the legislative authority of the commons, in relation to their own affairs, than the common or statute law can circumscribe the authority of the whole legislature. Each of them can institute new laws, alter, explain, and abrogate the old, when the exigency of the case requires it: otherwise they would be bound to follow erroneous laws, without the power of remedying their mischief: and in new cases be unable to provide any remedy at all: both which are incompatible with the idea of all legislative authority. Whenever the legislative authority of either house, in affairs relating to themselves, is either altered, circumscribed, explained, or abrogated by the authority of the whole legislative body, in those instances it is rendered inoperative; in all others it remains in plenary power.

That this is the constitution of the realm, is indubitable from every testimony of record or experience; and it shall be proved from those very precedents, authorities, and records, which those gentlemen

tle men have brought to support a contrary opinion.

The arguments, therefore, which have been drawn from precedents, considered as the sole origin and guide in the resolutions of the house of commons, respecting the Middlesex election, whether on one side or the other, are so far from being conclusive, that they are of very little import.

The author of *The Fair Trial of the important Question*, has laid down six principles, " which, as " he says, will so speak for themselves, as to make " the application of them to the present question " easy." As the five principles, subsequent of the first, depend on that first principle; if that first principle can be maintained, the others are permanently established. But if the first be attended with such manifest debility, that it cannot sustain itself, the others must necessarily remain unsupported. The principle is as follows: " The house " of commons not being *self-created*, but made by " the constitution, and being only representatives, " chosen by the people, cannot make its own " power, because it did not make itself: nor can " it have power to destroy that power from which " it is derived; and by the existence of which " alone it can subsist in its national and constitutional state."

The term constitution, unapplied to the constituent parts of it; and to the exercise of the legislative, executive, and other powers of which it is composed, conveys nothing more than a mere abstract idea, inoperative and unproductive. It cannot, therefore, as that writer declares it is, " be " sufficient, for his present purpose; to say the " house of commons is founded in, and owes its " being to the constitution." For, in order to support that opinion, not only the constitution as it existed, previous to the birth of the house of

commons, but by what institutive means this house first came into being, must be shewn. For without this indispensable introduction, the question can never be justly stated, examined, or resolved.

Such being the case, perhaps the assertion, "that the constitution is a term we all understand," may be liable to very reasonable objections. And I imagine, the tedious debates, unsettled opinions, and indecisive productions of the press on this very question, are more than sufficient testimony to prove, that the constitution is a term which is *not* understood by all of us. In whatsoever way that may be decided, what he subjoins is certainly true; "that this constitution is a thing which was not made all at once, but in the production of the improvements of time."

It is demonstrated by magna charta, and other antecedent records, that the common council of the realm, or parliament, was then composed of the archbishops, bishops, abbots, priors, earls, barons, and all others who held their lands, in capite, or immediately from the crown. That these were, by the nature of their tenure, obliged to attend the parliament as a suit and service due to the sovereign, whenever he summoned them to that purpose. It is demonstrated also by the same great charter, that no other persons did, and by the nature and principles of the feudal system that no others could, constitute any part of this parliament. And this is evident from what is said in that charter: *and all these customs and liberties aforesaid, which we have granted in our reign, we will observe towards you (the great council); and all these customs and liberties you shall observe to your vassals also.* Which latter injunction could have found no cause of being inserted, had those who held their lands under the barons enjoyed the privilege of

of electing members to represent them in parliament. For in that case the grant would have been made general to the whole nation from the crown : and not intermediately from the king, through the barons, to the people.

The historical truth of this grant is this : that as the king received suit and service from those who held immediately from him, and no others ; so the ecclesiastics and barons had suit and service from those who held immediately from them also. And as the former constituted the court or parliament of the kingdom, so the latter formed the courts or little parliaments of the distinct baronies and manors. The same rights, therefore, which were granted by the king to his great vassals, he, by the same charter, obliged these inferior, but more imperious masters, to concede to their vassals also : and from this origin, by various incidental circumstances, sprang the privilege of representation, the right of election, and consequently the house of commons.

That the commons, and the right of electing them also, were created by the *fiat* of the king, and by the same manifestation of his will, is evident from the writs which were issued on the first and subsequent convenings of that assembly. The existence of that house, and of their electors, is, therefore, derived from the same source, the king alone. It is self-evident, therefore, that the power of that house was imparted by the sovereign, because the people could not give to their representatives what they did not themselves possess ; and that the right of electing representatives to exert it, was given to the people. For the giving existence to any legislative body, implies, and actually conveys, the right of exercising those powers which are productive of the ends for which they were created. And thus, whilst those powers were

given to the commons, which are expedient to representation; the like powers were given to the electors, which are requisite to election. From this it results, that the people cannot abridge, or rescind the representative authority; nor the commons the elective: because both are held from the same original power, are of equal validity, and of constitutional establishment. But as no human precaution can prevent the election of men, who, by their actions, may prove to be undeserving the great charge of making laws, whereby to govern a kingdom; there was necessarily reserved, or arose in the commons, an authority adequate to the removing such men, and consequently to expel and to disqualify all whom they might adjudge to be improper for that trust. Though this authority was absolutely requisite to preserve the house, as much as possible, from the contamination of unworthy members; when any one was driven from among them, they were, by the primæval authority of election given to the electors, inhibited from precluding the constituents from proceeding to a new choice: because they could not take from them that right which was coeval, as firm, and as constitutional as their own. The constituents, therefore, had the choice of every man in the kingdom, who was not disqualified by the law and usage of parliament; that man alone excepted, who had lately been rendered incapable of representation. And the right of refusing him, implied a manifest contradiction in terms, unless disqualification signifies the right of being re-elected. But our ancestors were of sounder understanding than to entertain an idea so irreconcilable, not only with the word, but with the nature of the action also: and to re-elect a man already rendered incapable of discharging that duty for which he was chosen. On that very account, the history of all

all ages, preceding the present time, afford no instance of such contumaciousness, folly, sedition, or insanity in the constituents of any county, city, or borough,

That this right of granting representation and election was in the king alone, for many ages, is confirmed by the experience of those reigns, which succeeded those of Edward the First, to James the First. During the progression of this time, many are the boroughs which were presented with those rights by their sovereigns. These then successively receiving the right of representation and election from the crown, the members were necessarily chosen to exercise all that authority which the commons had progressively acquired, at the respective times when these boroughs were added to the elective, and their members to the representative body of the popular part of this constitution. Among these, the right of disqualification was one: and to the exertion of this they were, of consequence, delegated by their constituents. By this undisguised and genuine representation of the origin of the representatives and their electors, it is evidently certain that the commons did not derive their power from the people, but from the throne. And, as that writer observes, "the end of their constitution and election must, in the nature of the thing, imply every incidental and collateral power necessary to that end." And this power being inseparable from the former, is, in like manner, proceeding from the throne also: or arising from adventitious circumstances, become a constitutional part of their power.

The right of disqualification being one of those progressive improvements which time hath effected; then does this right form no immaterial part of this constitution: unless it be incompatible with, not subordinate to, or destructive of, the institution

tion of that house ; and that it is not, will, I presume, be evinced by what I shall offer on this occasion.

The position that the commons cannot make their own power, because they did not make themselves, is a principle remote from being adequate to the conclusion which has been drawn from it. Because the power which gave them existence, can give them the right of making their own powers : and in this very instance there are evidences sufficient that with such they were endowed. For certainly they have made a considerable addition to their original rights, in opposition, or unopposed both by the king and house of peers. And it seems not a little extraordinary, not only on what foundation this principle was erected, but how the contrary of its being true could escape the observation of him who has advanced it. If no bodies of men, which compose any part of the inferior degrees of government in this realm, can make any powers, because these men were made by the constitution, and not by themselves ; then is the corporation of the city of London (which holds its rights by prescription, like the commons) and many others in this kingdom, incapable of making their own powers, because they did not make themselves. And yet such is the fact, these corporations have both the legislative and executive powers which they themselves have made. In consequence of this authority from the crown, they make bye-laws for the governing of their own body corporate, appoint those officers who shall carry them into execution, and disfranchise the members of it for offences. But it seems the commons cannot possess these powers respecting their own affairs, because they did *not* make themselves.

If

If none can make their own powers, but those who have made themselves, then tyrants only have that right, and their powers alone are lawful. A contradiction too palpable to need an explanation. If men would recede to the nature of themselves, and consider man as a gregarious animal, standing on a like ground of equality in general, and individually superior to each other by their talents mental and corporeal; that such beings require a rule of conduct to be established for their government, and consequently implies the governors and the governed; that all cannot be both at the same time, and yet that all should consent to have above them such who are best adapted to the making powers; the very inverse of the above principle is the truth. And none can have powers but such as have not made themselves. And this distinction is that which most essentially characterises a state of liberty from that of despotism. The commons of England received their power from the king, that is, from that part of the constitution which then alone could bestow it: and for that very reason, and for that alone, because they did *not* make themselves, they can make their own powers.

Although I am endeavouring to prove that the authority of the commons descended from the throne, I do not thereby intend to insinuate that these representatives are possessed of an unbounded power to exert that authority as they please, but in matters relative to themselves alone. The very nature of representation itself does virtually imply, that they shall not extend their power, however given, to the injury of those for whose advantage they were erected, and by whom they are elected. But this is manifest, that if they have not the right of making their own powers, because they did not make themselves, then neither their electors, the king, lords, and commons, taken
 4 either

either separately or collectively, can have any right of making their own powers.

With intent to prove this position, I shall shew in what manner the preceding principle of the writer before mentioned will operate in another view, and what will be the end of carrying it into execution. If the commons cannot make their own powers of disqualification, which are not defined by law, because they did not make themselves: it then follows that the electors cannot make their powers of election, which are not defined by law, because they did not make themselves. And thus the powers of the elected and electors standing alike on this fallacious ground of not being lawful, because they did not make themselves, must sink, and all fall in together. Nor do the ill consequences of the preceding principle terminate in this place: it must proceed to more fatal effects. For if the commons, because they did not make their own power, cannot exercise the authority of disqualifying a member by their own resolutions, it follows that they cannot exert that power in conjunction with the crown and the house of peers. For if the power of disqualification be injurious both to the electors and the elected, that power can no more be legally exercised in conjunction with the king and lords, than by the commons solely in their own house. For to assert that the commons, because they did not make their own powers, have not the right to disqualify a member by their own resolutions, without depriving the electors of their right of election, the member of his right of representation, and risking the ruin of the constitution itself; and yet to allow that these very commons can effect the same thing in a more extensive degree, with more injurious effects, and without violating the rights of the member, the elector, and the constitution, conjoined with

with the two other legislative estates, is to assert; that the same act which is criminal when committed by themselves, is lawful when transacted in company. What position can be more replete with absurdity than this, that the same men both *have* and have not the same right? That they possess it where it can do the most mischief, and are not invested with it where it can do the least. That they can rescind any number of subjects both from their elective and representative rights for ever, and not disqualify a member, and render the votes of the constituents ineffectual for the duration of one parliament. Is not the authority to exert such a power by the commons, in concert with the king and lords, as diametrically repugnant to the design, and as subversive of the ends to which they are delegated by the people, as if it was exacted by themselves alone? They can; therefore, have no greater title to the exercise of this power in their general legislative capacity than in their separate. Both rights stand on the same basis; both are equally beneficial or equally prejudicial to the people themselves; and, therefore, both must be alike rejected or received.

If this conclusion, drawn from the preceding principle, be logically true, then does all that has been advanced, by those who allow that the legislature can establish the circumstances which can render subjects ineligible, and deprive the electors of the privilege of voting for such candidates, fall conjointly to the ground, with that power which they have disallowed to reside in the commons. For, if it be true "that the commons cannot possess the power to destroy that power from which it is derived, and by the existence of which alone it can subsist in its natural and constitutional state;" if the power of disqualification be replete with such destructive influence, it cannot

either separately or in conjunction with the other estates of the realm deprive men of their eligibility to become members in parliament: nor the electors of their right to make them so. For the first principle of representation by election is, that those who have imparted that right to their representatives, have not invested them with the authority to injure their constituents either by themselves, or in the acts of legislative establishment conjointly with others.

In consequence of this deduction from the above principle, the laws which have precluded some subjects from the privilege of being elected, and others from the right of election, are equally repugnant to the constitution; equally illegal, as statute laws, with the resolutions of the commons as parliamentary; and, therefore, the long list of place-men, pensioners, such as possess not a landed qualification; and others, disabled by the statute, have been as illegally disqualified by the whole legislature, and more injuriously than Mr. Wilkes. For their interdict is for ever; his for seven years only: and thus, in direct contradiction to the Roman Catholic faith, the guilty have their purgatory, the innocent are damned for ever.

In like manner the freeholders, who possess not a freehold of forty shillings a year, are as illegally rescinded from their privilege of voting, and much more detrimentally than the electors of Middlesex in favour of Mr. Wilkes: for their right, also, is abolished for ever. Whereas those of the Middlesex electors was only rendered ineffectual by their own perverseness at the last election; and is no farther suspended even, than the term which they themselves affixed, by giving their voices to a candidate disqualified for seven years at most: or till a vaca-

tion may arrive, however expeditious be the day of its approach.

The commons, therefore, who exerted this right conjointly with the king and house of peers, either *had* or had *not* a right to the exercising of it. If they possessed that right, the validity of those statutes is sustained by the authority which instituted them. If they did *not* possess it, they have committed a violence as arbitrary and as illegal, in conjunction with the other estates, by the consenting to enact those laws, as by effecting a like purpose by their own resolutions: and the former are not the less exertions of tyranny, because they are denominated laws, and enacted by the whole legislative power.

But the gentlemen who oppose this power in the house singly, allow the right of it, when they are united with the other parts of the legislature: and agree that these laws, so instituted, are obligatory and of plenary efficaciousness. But in this instance, as in a multitude of others, do they not depart from that very principle on which they have founded their opinions: and allow that the house which did not make itself, can make its own power? and this even to the producing consequences more fatal than those of which they complain, and against which they so energetically declaim. Did not the commons make that power which disqualified, in conjunction with the peers, though they did not make themselves? Why then are they justly entitled to this power, when in conjunction with the other states, and illegally exerting it in a state of separation? They enacted the former by the same authority which they voted the latter; and as those laws remain a rule of conduct in matters relative to the disabling the subjects from representing and voting, so do those resolutions also, respecting their members. The sta-

tutes, therefore, and the resolutions which have generated these effects, are alike legal; proceed alike from the same source of authority; are equally a part of the constitution and to be observed: or a violation of it, and to be equally exploded.

If the antiquity of a custom or law of parliament can give sanction to the future observation of it, and strengthen the efficacy of precedents, this power of disqualification by the sole authority of the house has that advantage. For this law of parliament was known and practised in times anterior to any statute which regards either the defining those persons who in counties should have the privilege of voting, and who alone should be elected in counties, cities, and boroughs.

In the time of Richard the second, a knight-banneret was disabled from sitting in that house, because he was considered to be a dependant on the crown, in consequence of his having received the distinctions of royal favour. At that time there was neither common nor statute law which inhibited either placemen or pensioners from sitting in the house. And this reign of Richard was the fourth only which had succeeded the original establishment of the house of commons. Whereas the first statute relative to those matters, was enacted in the reign of Henry the fourth. As no parliamentary act, instituted since that time, has rescinded that right of disqualification from the commons; and the practice of it has been confirmed by repeated resolutions of a like nature, and it has stood unimpeached to this time; by what means has it lost its ancient energy, and on this occasion become unlawful? Whether the house of commons hath received improvement, by the acquisition of power, since the beginning of its establishment, is a question which enters not into this subject?

That

That an encrease of power hath arisen in the house of commons, whatever may have been the intervening circumstances, and causes unforeseen, which have afforded the occasion, is not to be denied. This power hath been obtained by that authority which was originally imparted, and constantly resided in them; and this independent of any new powers acquired on the part of the electors. If this power be grown too great for that proportion which the democratical part of this constitution ought to possess, let it be reduced by an act of legislature; and to this there can be no just objection. But to preclude the exercise of a right established for four centuries, at least, unobjected to till this hour; which, though frequently exerted, hath produced no ill consequences; which arises from the nature of the house of commons, is capable of being exercised in no other place, and is essential to the support of the honour and dignity of that part of the legislature, would be deemed either an act of national insanity, or a demonstration that we had degenerated from the wisdom of our ancestors. In either case, nothing can be more pernicious than an indulgence to those who petition for what they have no right to ask. The king cannot constitutionally listen to any request relative to any matters which have passed in the commons, unless that request proceed from that house.

It is in reality mere delusion and sophistry to argue, that the commons receive even the right of exercising their authority from the people. Not a twentieth part of the community have the privilege of electing representatives. By what logic can it be proved that those have chosen, who have never voted? Can these men have communicated to the commons a right of representing them, or to the electors to exercise the right of choosing in their

their stead, and be their representatives in elections? By what sign have they expressed such transfers of power? The commons are indeed said to be the representatives of all when they are elected; but are they for this the less delegated to the exercise of their power by their electors only, when they receive no authority to act from any other part of the nation? Their power therefore cannot be derived from the people, because their election is not: unless a twentieth part of the number includes the whole of it: and therefore the force of that argument which was intended to be drawn from the position, that the power of the commons arose from the election of the people, sinks by its own debility. Hence it appears, that if the commons have exercised that power, in consequence of its being given by the people, they have acted under an authority by which it never could be given. For the electors are no more the people, than the representatives are the elective body. Nay, the former are not possessed of a right which the latter enjoy, that of being elected to the important trust of legislation and the public good. If the constituents therefore have elected, as the people, they have chosen, under a power also which they do not possess; and thus the powers of election, being made by those who did not make themselves, they could not make that power. The very delegation, therefore, of authority to the commons, as the representatives of the people, being imparted by their constituents only, is illegal, and has no stability. And this result is consecutive of the fallaciousness of that very principle, which declares their power is founded on their being elected by the people.

These even are not the sole consequences, detrimental as they are, which will devolve on this devoted state, should the preceding principle be tho-

thoroughly adopted. The king himself and the house of lords, being *not* self-created, but made by the constitution: these can no more make their own powers than the commons, because they did not make themselves. And thus these two estates being in the same impotent situation, the whole constitution, king, lords, and commons, the statute, common, canon, and all other laws, the executive powers, courts, magistrates, and other officers, must vanish like the baseless fabric of a vision, and leave the governors without power, the people without restraint, and every thing reduced to anarchy and confusion; and the constitution itself must be annihilated. Such will be the effect of that position, that the commons cannot make their own powers, because they did not make themselves. The error of this principle arises solely from the considering those things to be emanations from the constitution, which form that constitution itself.

Notwithstanding the positive position of this principle, it is acknowledged, "that the end of
 " this institution and election must, in the nature
 " of the thing, imply every incident and colla-
 " teral power necessary to that end." This seems to be not a little singular, that a power which cannot be made by the commons, because they did *not* make themselves, should imply every incidental and collateral power necessary to that end. This is, in fact, *something* proceeding from *nothing*, or a *self-creation*; and then these powers are self-created, and the commons may proceed to make their own powers, because they made themselves. In consequence of this collateral power, "he insists, and
 " strongly maintains, that the house has, and
 " ought to have, the *sole* power of trying and
 " determining who are, and who are not duly
 " elected, according to the law of the land, who
 " are to be members of the house." If

If the law of parliament be not of the land; then is the common law not of the land also. The authority which formed the former, like that which instituted the latter, sprang from the same constitutional powers. The law of parliament has at all times been; and still continues to be, superior to the common law in various instances. And if the house of commons are entitled to the right of committing their fellow subjects to prison, without legal process; of interdicting the judges from granting writs of Habeas Corpus, and of protecting their members from many injunctions of the laws, to which the other constituents of the realm must yield, then is it paramount to statute law also.

In fact, the nature and form of the constitution, the concurrence of incidental circumstances, and the necessity of their being attended to, gradually proceeding with the lapse of time, have conjointly impelled and directed the commons to exert their original authority: and to make those powers of disqualification, in order to preserve themselves, and the constitution thus established.

To this day the commons have no other than the law of parliament, by which they can disqualify a member, who has been elected, according to those rights of eligibility, which now remain among the subjects. Is every member, therefore, who is so elected, and who may commit notorious crimes and misdemeanors, still to remain, to the disgrace of his companions, and the legislature itself? Or must the commons, in obedience to their inquisitorial power, which they made, though they did not make themselves, impeach those members, and bring them to be tried before the tribunal of the lords, for the commission of deeds, against the doing of which there may exist no positive law? And thus, by the intermediation of another court, accomplish the same act, which is so much decryed,
when

when it is effected by themselves? This, indeed, has been formerly done, and may still be continued: when their members have committed such offences as are contrary to the positive expression of the laws, and adequate to the high cognisance of that house. But certainly to punish men by laws made *ex post facto*, and originally bringing them to that court which ought to be the tribunal of appeals from others, is not the most distinguishing characteristic of the liberties of Englishmen.

But in the present case, and for a reason springing from the same source, the commons have a right to discuss and determine all those matters which are of inferior notice; and to strip offenders of their privileges, by disqualification; and thereby submit them to those punishments, which the laws have indiscriminately appointed and enjoined: and to which they may be sentenced by the courts of justice. In both these instances, whether the affair be transacting in the commons, and the offenders still members of that house; or when it is brought before the judges and the jury, they are tried by their peers, both respecting their disqualification by the house, and their punishment by the courts of law; a circumstance congenial with the liberty of Englishmen, and which would have been violated by a trial before the lords.

Were the lords entrusted with the important power of determining in cases of electing members of parliament, or of the power of the commons to disqualify, that noble house would long since have become the aristocratic sovereigns of the realm. They would have filled the commons with their servants and dependents: and by the union of these powers in their own hands, have subdued both the king and people to their terms. And thus, like the London apprentice between two lions, with a hand down the throat of each, they would have

plucked the heart of liberty from both parts of the constitution.

Had the preceding power been reserved to the crown, the same pernicious consequence had, ages since, arrived, and absolute dominion been established without a house of lords, or commons. That this state of things would have been preferable to the aristocratic despotism of the lords, I am perfectly persuaded, from the experience of all past and present aristocracies. That it will become more eligible than the combination of the three estates can hardly be doubted : I mean should the lords and commons become so degenerately venal, as not to enact even the best laws without the influence of pecuniary purchase ; and the electors be so corrupted, by the same contaminating means, or by sedition, and other sinister motives, which are not less corrupt, that the talents and the virtues of the candidates enter not into the consideration of those men, whom they elect for their representatives.

Were the constituents, of their respective members, in possession of the right to decide on the merits of elections : or of the conduct of their representatives in parliament ; according to the present profligate practice of being bought to give their votes, they would most generally reject the man they had chosen ; and disqualify him who was brought before them, for the sake of being re-purchased to re-elect the same representative, or his competitor. The arch of shame, which, entire, supports men in integrity above the current of corruption, when one stone is taken from it, falls in together, and with it, all whom it sustained.

The whole body of the electors can have no claim to the rejecting or disqualifying those whom they have chosen. The commons once elected,

are no longer the servants of the individuals who elected them, but of the whole community : and to those it is impracticable to commit the preceding powers. They are too numerous and too distant to assemble on such occasions. It can be executed in no manner but by representatives, and those they have already. The commons are, entrusted with that charge ; and are, therefore, that collateral power which is necessary to the end of their existence. It is placed by the constitution where alone it can be safely deposited. Either the rescinding it entirely, the dismembering, or the removing it to another court, must terminate in the destruction of those rights, which, it is averred, will be annihilated, if they continue in the hands of the present possessors.

It still remains to be objected, that those rights of disqualification may be ascertained by law, and those cases described, for which alone men shall be disabled from their privileges of representation and election. But this is, in the nature of human affairs, utterly impracticable. For as acts of parliament will not admit the latitude of constructive meaning, they can be obligatory only in such cases as they literally express. At the same time, various are the occasions in the proceedings of a state, which may render some men deserving the infliction of expulsion or disqualification only ; others, to be laid open to the inquest of the laws. This authority to disqualify was therefore left solely to the discretion of the commons ; and it cannot be alienated without leaving the most egregious offenders, on this side treason, felony, and breach of the peace, in full exercise of their vicious propensities, to the subversion of the state, the religion, and the morality of the nation.

It is within the limits of a legislative power specifically to determine who shall *not* be elected, and

who shall in general enjoy that privilege, even in a free state, provided both these conditions are conducive to the welfare of the whole community. But it is impracticable to institute laws for the disqualifying of such members as may justly incur that penalty by actions unprohibited by law; unless our legislators were blessed with prescience; and could enact such laws as would prevent the commission of offences, by divining, from present causes, what would be their effects in futurity. Without this celestial gift, there remains no other method of accomplishing those ends which are inseparable from the public good, but by leaving that power of disqualification in the commons as undefined as at present, by specific statutes; and in them that power exists.

Hence it is evident, that the legislative, as well as the jurisdicative and executive powers, are necessarily blended in the authority of the commons, as these alone are that part of the constitution, which can answer all the ends of their being instituted. That there is no other in the legislature to which it can be securely confided: and by them, it is the least susceptible of being applied to the injury of themselves and their constituents, for certain it is, that the commons will prove as jealous of their rights, as little inclined to diminish or rescind them, as their constituents can be, to lose their privilege of election: because the rights of both depend on the preservation of the same constitutional power.

The advocates for the illegality of Mr. Wilkes's disqualification have been extremely attentive to the considering the house of commons as a court of judicature alone. A gentleman on that side of the question hath said, " Certain it is, that
 " the house of commons is become the sole court
 " of judicature in cases of election. And for that
 " very

“very reason, the exercise of jurisdiction, a disclaimer of legislative authority in that instance.” If this be an argument in favour of what he has offered, that the house of commons is bound by precedent only, and can neither exceed it, nor act where there is none; let us see how such an argument will operate in direct opposition to that conclusion which he has drawn. Certain it is, that the house of commons is, and ever has been, the sole court of legislature in cases of election; and for that very reason the exercise of legislation is a disclaimer of executive authority, in that instance. For what is the very nature and first principle of legislation? Is it not clear, that it shall govern itself by the known powers of legislation? Does not the difference betwixt legislative and judicial powers consist in this, that the one *makes*, the other *executes* the laws? Jus dare is the province of the one, jus dicere the attribute of the other. And in this manner it is equally proved, that the house of commons is a court of legislature as much as judicature. Of consequence, it is neither, or it is both: for if the exercise of jurisdiction precludes the power of legislation, then is it not a legislative court. And if the legislative authority precludes the judicial, then is it not a court of judicature. And if both be allowed, it includes the two powers. And this is demonstrably the case. For by what authority were these precedents made, which they have quoted as laws and rules of conduct? Was it not by the legislative authority of the house of commons? And can a precedent made by an incompetent power be a law or rule of action? When they allow the precedent to be efficient, they allow the authority to be efficient also; or they suppose the most egregious contradiction in legislature, that the power which hath made a law, is insufficient to the making it; and

and yet that law is valid and right. This would be a progeny without a parent. When they acknowledge the efficacy of precedent, they do in fact, allow something greater and more efficacious than the precedent, the authority which made it. For that which makes, in this instance, can destroy; which laws cannot: for they cannot destroy their own effects.

All argument, therefore, which has been attempted to be derived from an analogy between the house of commons, and the courts of law, hath no foundation. The former is at once both legislative and executive. And even in the courts of judicature, it is not the precedent which gives the force of law to a determination: it is the authority, which made the law, that gives energy to the precedent. For, could it be supposed that any one precedent was founded on any thing less than an institute of the legislative power, no judge would decide in consequence of the efficacy of that precedent.

In the house of commons the members, are both the legislative and executive power, respecting their own affairs. In the courts of Westminster, the judges are the executive power, which carries the laws of the legislature into execution. What those express, dictate, and direct, is literally to be observed in all penal prosecutions. In unwritten laws, precedent may be the sole means of discovering what the law intends; and there they are to be followed: but where the law is known, precedent is no farther a rule than it is consentaneous with the law.

Even a judge, the magistrate executive only of the legislative power, by evidently manifesting the errors of former precedents, in matters of property, is authorised by the very nature of that obligation which directs him to observe, to interpret the
intention

intention of the law, to do justice, and to depart from that precedent; otherwise he might be compelled by an unjust precedent to subvert the law itself, to prefer error to truth, and become guilty of the greatest crime a judicial magistrate can commit, by not deviating from those precedents. Yet, according to the opinion of those gentlemen, who have written on the other side of the question, precedents are implicitly to be followed. And can that authority, which in the commons has right to make, alter, or abrogate all precedents, be bound to observe their own precedents, when even a jurisdictional magistrate can deviate from precedents in judicial decisions, if those precedents are erroneous? Where there exists no law, in this country, a court of legal judicature cannot determine in any case so circumstanced? The constitution will not allow the judges to decide according to the spirit of the laws, already existing, or to institute a new one on that occasion. For the same reason, it cannot determine against the laws already made, however severe may be the circumstances in any particular case; for either of these methods would be to exercise a legislative authority. but in all penal laws where the letter bears extremely hard in particular cases, and the person is found guilty, the prerogative royal is the residence of equity; and by that, though condemned by law, the offender may be pardoned by the juster judgment of equity. The rigour of legal determination is redressed by the equity of the court of chancery and the house of lords. The commons, therefore, having no other court in which their own matters can be examined and adjudged, none to which they can appeal, do necessarily possess the right of both law and equity, and may alter or
abrogate

abrogate any former decision, as it shall appear reasonable to their judgments.

In the civilization and legislative establishment of all states, the parts of which it is composed are necessarily endowed with powers adequate to the ends for which they were instituted. For this reason, both the legislative and executive authority have been entrusted to the house of commons, in all matters relative to the elections of their own members. They are, therefore, authorised to examine and adjudge in all new and unprecedented cases, as in those which are now called precedents. For by what other authority shall such transactions be discussed and determined, which are nothing similar to former instances? Or, indeed, by what means can any case be brought before that house, for which there is no precedent? Of necessity, therefore, the right of acting legislatively and executively, in all unprecedented cases, was left to that house; because, there being no other court by which such cases could be examined and adjudged, without this legislative power, no new case could have been examined or decided; a defect in legislative establishments too conspicuous to want the aid of argument to prove it. Without the authority of carrying their resolves into execution, their resolutions had been nugatory, ineffectual, and the subject of derision. The executive power has, therefore, been uniformly conjoined with that of legislation in the commons, in all the resolutions which they have made.

For certainly there was a time antecedent to every resolution of the commons respecting elections. The house, at that time, could not possess the right of deciding in cases of that nature, from precedents; for there were none. By what kind of reasoning can those resolutions, which formed
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those precedents, be now considered as an authoritative rule of acting, but from that legislative authority which then resolved in that manner, without precedents? From hence, is it not manifest, beyond the power of refutation, that the efficacy of precedent, and the reasons for their being a rule of action, depend not on their being precedents, but on the adequateness of that authority which voted those resolutions of the house. For, if nothing new can be examined and adjudged by the commons, because it is unprecedented, then none of those resolutions, which are now called precedents, could have been lawfully made; because they were once new and unprecedented. In consequence of this very reasoning, that precedents are the grounds and boundaries of the authority of the commons in matters of elections, instead of establishing their doctrine, they have absolutely refuted all that they intended to effect. According to the fairest and sole inference, justly to be drawn from their arguments, the representatives of the people can possess no legal right to examine, discuss, and adjudge any matters relative to themselves; and every resolution and precedent is an act of usurped authority. Such matters, therefore, being not cognizable in any other court, they are exempted from all judicial examination and decision whatsoever. Consecutive of this blessed method of reasoning, right would have no protection, injury no redress, and criminality no punishment, in any transactions which are relative to the commons only.

To me it appears, that as precedent can never impart authority, according to the opinions of those men, the house of commons can have no right either to examine or determine any cause of election which may come before them, even where the whole legislative authority hath established the rule

by which they are to proceed. No act of parliament expressly gives, or is supposed to give, authority to the house of commons, respecting themselves. It only bounds the limits and delineates the line of that authority. From these premises, though the legislature has given the rule, as a precedent, it cannot give them authority of acting, and the statutes do not. For that would be a strange inversion to suppose the *act* of any assembly to be the *authority* of making or observing it. By what right, then, do the commons reject their members when wrongfully elected? For a rule to act without a power to act, is a body without an animating principle. Much less can they reprimand, expel, or disqualify any man legally chosen and admitted, for offences against the house, the state, or the religion of the kingdom. According to this manner of reasoning, even all their privileges must vanish, excepting those alone which have been confirmed to them by the legislative authority. Such is the logical conclusion which inevitably follows the principles, positions, and arguments of those gentlemen, who, on either side of the question, have attributed the authority of resolving solely to the validity of precedent: and that, thereby, the commons are inhibited from all resolutions which are not exactly coincident with the former. That all the antecedent cases, which have been determined by the house, have been examined and adjudged by the legislative authority; and not by the efficacy of any precedent similar to the case then before them, will appear from those precedents which have been cited to prove the contrary: and that, therefore, the votes and proceedings which expelled and disqualified Mr. Wilkes, were equally legal, and are alike obligatory with all the former. For by what logic, or what energy

energy of reasoning can a precedent, illegal in itself, impart legality by similitude to any subsequent transaction? or, by what means can the want of precedent alienate, circumscribe, or abrogate that very authority which hath uniformly and effectually exerted itself in the determination of all those matters, relative to elections, which have at any time been brought before the commons?

Were there in the Journals ten thousand precedents, exactly similar to this case of the Middlesex election, the whole number, as precedents, cannot afford the least legal ground on which to proceed, unless the authority which voted them were lawful in itself. And, if that authority which hath examined and adjudged all those preceding matters, and carried their resolutions into action, be lawful, by what legislative prohibition is it become illegal and inert at this hour, and on this occasion; though not a precedent can be found, in which there exists the most distant resemblance with the election of Middlesex?

Those gentlemen, therefore, who have argued in defence of precedents alone, as the guide of parliament, however reluctant they may prove to acknowledge it, do in fact allow, that the power which voted them is adequate and legal, or they sap the ground on which they have placed their batteries; the plat-form has given way, and their whole artillery is rendered useless. When they acknowledge that those matters which arise in the commons, respecting themselves, are to be examined, discussed, and adjudged in that house, and *no where else*, do they not confess that the commons have the legislative power of deciding in this instance of Middlesex? And when they agree, that the maxims and methods on which they proceed, do rest entirely in the breast of the commons, and are not defined and ascertained by any

particular law, do they not, in fact, conclude and declare, that the resolutions of the commons cannot be circumscribed by precedents; but that the house still retains the same legislative authority in deciding unprecedented and unexampled cases, as rightfully at this day as in all the former? From this consideration of the affair it evidently results, that the principle which can alone give efficacy to those arguments in favour of precedents, does in reality defeat all those conclusions which the opponents of the last resolution of the commons would infer from it. Mr. Wilkes is therefore disqualified, and Mr. Lutterel determined to be the sitting member, according to that authority which gave lawfulness to all the previous resolutions that are acknowledged to be legal, however dissimilar to the present. In the truth of things they stand, alike, on the same basis, of constitutional and legislative power in the house commons.

What I have hitherto offered, respecting both authority and precedent, is, nevertheless, open to this objection. That in whatever points the house of commons have, by their own consent, united in an act of legislature, and precluded themselves from the parliamentary right of determining the matters which come before them, that therein all legal exertion of their legislative authority, respecting such matters, is annihilated. If then the right of expelling and disqualifying Mr. Wilkes be restrained or abrogated by any act of legislature, the resolutions of the house on that affair, are not only illegal, but oppressive. But hitherto no writer has quoted in what reign, and by what act, the commons have been restricted from expelling and disqualifying their own members. There is no such interdicting statute yet existing. It follows then, that in whatever instances the law of either house is neither expressly limited, nor
abrogated,

abrogated, by legislative powers, the authority of the commons exists with as plenary a vigour at this day, as in all the ages which have passed since the institution of that house.

It has been urged by one author, that it is the opinion of lord chief-justice Coke, "*that he which is eligible of common right, cannot be disabled but by act of parliament.*" I will quote the words, and the occasion on which they were written; and then, if I mistake not, the direct opposite of this assertion will appear to be the truth. In the 46 Ed. III. the lawyers of all denominations had been disabled by an ordinance of the *lords* from sitting in the house of commons. On this subject, lord Coke declares, "any of the profession of the common law is eligible. For he which is eligible of common right, cannot be disabled by the said ordinance of parliament in the *lords house*, in 46 Ed. III. unless it had been by act of parliament." Hence it is clearly manifest, what was never denied, that an ordinance, or resolution of the *lords*, cannot disable the right of the commons, because this ordinance was neither an act of parliament, nor a vote of the commons. And in this manner gentlemen deliver things which they do not comprehend, or which they wilfully misrepresent.

When lord Coke declared, that nothing but an act of parliament could disable a member eligible by common right, he intended not by that common right to signify all those who had the right of being elected by common usage. How could he say, that a member disqualified by the commons, had the common right of eligibility? He who has declared, that the commons in their house have the power of judicature; that all weighty matters concerning themselves ought to be determined, adjudged, and discussed by the course of par-

parliament, and not by the common laws of this realm, used in more inferior courts? Can he, who has brought the case of Long, that was disabled for bribing the mayor of Westbury, Hall for a libel, and the attorney-general, for being an attorney-general, be brought to countenance such groundless attempts?

At what rate do these writers estimate their own understandings, or those of other men, if they imagine they can so easily prevail on them by their own want of knowledge, or by insidiousness, to yield assent to such indefensible proceedings? Lord Coke, therefore, manifestly declares the contrary of all that has been imputed to his charge on that side of the question. He most evidently supports the resolution of the house of commons which disqualified Mr. Wilkes. And, if my memory deceives me not, united in such disqualifying votes when he sat in parliament. This very man, whose authority these gentlemen have quoted as their apostle, has written that gospel, the doctrine and the precepts of which support the contrary to what they profess, and that side of this question which they oppose. Hence it appears, that Mr. Wilkes, when disqualified by the house, was not eligible *of common right*; that there needed not an act of parliament to disable him; and that Sir Edward Coke has delivered this as his opinion.

The writers who have advanced this doctrine of similarity of precedents, have, indeed, been kind enough to answer it themselves, in fact, tho' not expressly in words. In their arguments in defence of the similarity alone, they have adduced many instances to prove that this resolution respecting Mr. Wilkes is not legal, because there is none exactly corresponding to it in all points. But they allow, that could the journals of the house afford
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one precedent exactly analogous, that this would be a just ground on which to have disqualified him. Thus the right of disqualifying a member elected according to law is allowed; because by confessing that such precedents would be of sufficient authority, they agree that all those who were lawfully chosen, were as lawfully disqualified; and therefore the being eligible by law, or even chosen in consequence of it, by their own arguments, does not render the house incapable of making a man ineligible by their resolutions, who is eligible by law: and this fact is evinced by every record relative to such transactions. In order, therefore, to support this argument of eligibility, they must renounce either their arguments of precedent; or prove that all those who have been disqualified had no right to eligibility.

Tedious, vehement, and inconclusive as the reasoning on each side has proved, whether expulsion from the house does or does not include a disqualification, I shall animadvert but little on that part of this subject. Mr. Wilkes was *disqualified* as well as *expelled*; and on that fact I shall offer my opinion. And here let me explain that idea which is justly annexed to, and ought to be conveyed by, that word disqualification. Does it not express an incapacity of being re-elected, during that parliament? It must signify this, or it means nothing. To assert, therefore, that a disqualified person is still eligible, is to assert, that such a vote of the commons has no effect. But the writers on that side agree, that it has such an effect, where precedents authorise it; and I have proved, that whatever is the effect of precedents, is derived from authority. To say, therefore, that the Middlesex electors have a right to elect a man *disqualified*, is to say that he is not *disqualified*. For if the disqualification does not
deprive

deprive them of the right of chusing Mr. Wilkes their representative, it has effected nothing. By agreeing, therefore, that the house has a right of disqualifying a member, they have confessed, that his electors are disqualified from chusing him, or there is no consequence to be drawn from premises; and the right which they allow to be, exists not.

Though every thing which I have offered fairly arises from the principles and positions which they have adopted, and refutes the doctrine, that Mr. Wilkes being eligible by law, is therefore incapable of being disabled by a vote of the house of commons; I will nevertheless indulge them in every latitude of argument to which they have extended their endeavours: and now enquire whether he was eligible by law, as they assert. And in order to discuss that subject with more fulness, perspicuity, and conviction, I shall recapitulate those circumstances which, they say, are alone sufficient to render a man ineligible by law. It will be then seen how ineffectually they are supported by this particular.

And these legal disqualifications are, that the members must not be either aliens or minors. They must not be of the twelve judges, of the clergy, or persons attainted of treason or felony. They must not be sheriffs of the county, nor mayors or bailiffs of the boroughs they represent. They must not be persons concerned in the management of duties or taxes, created since 1692, except the commissioners of the treasury. They must not be commissioners of prizes, transports, sick and wounded, wine licences, navy, and victualling, secretaries or receivers of prizes, controllers of the army accounts, agents for regiments, governors of plantations and their deputies, officers of Minorca or Gibraltar, officers of the excise

and customs, clerks or deputies in the several offices of the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretaries of state, salts, stamps, appeals, wine licences, hackney coaches, hawkers and pedlars, nor any persons holding a new office under the crown, created since the year 1705. They must not have a pension under the crown during pleasure, or for a term of years. They must not accept an office under the crown, excepting a new commission in the army or navy. That every knight of the shire shall have a freehold or a copyhold of a clear six hundred pounds a year. Every burgess one of three hundred pounds a year, excepting the eldest sons of peers, and of persons qualified to be knights, and the members of the two universities. Such then are the persons who are alone rendered ineligible by law; and therefore, say they, Mr. Wilkes, being *neither* of these, is eligible by the laws of the land.

But if Mr. Wilkes should be found to be one of these, or rather the same person under two different injunctions of disqualification, when he was first elected, of what avail will then be their assertion of his being eligible by law? And should it be proved also, that they have omitted one cause of disqualification, which, were the parliament now dissolved, would then forbid his being a member; the common law and common right, on which they rely with such confidence for support, must yield before that of the statute, and all the arguments they have raised thereon sink into ruin.

First, then, no alien can be a member of the house of commons: because, being born in a foreign country, his allegiance is there due, and not to this kingdom. Mr. Wilkes was an outlaw, rescinded from every right of a subject, when he was first elected. A situation even more

disqualifying than that of an alien. For the latter is under the protection of the laws, which Mr. Wilkes was not. And this outlawry was not reversed when the parliament was first convened and he returned after the general election. He could not possess either a freehold or a copyhold of six hundred pounds a year, because, being an outlaw, he could hold no property in this land. He was therefore under a double disqualification by law, both in the days of his first election and return. And though he was not expelled till the outlawry was reversed, he certainly was not, at the time of his return, *legally* a member.

For the reversal of an outlawry does not restore a man to the rights of a subject, in things transacted during the time in which he remained to be an outlaw. It reinstates him only in his native rights, from the day in which the outlawry was removed. On what grounds then the sheriff could presume to receive the votes which were offered for Mr. Wilkes, or return him lawfully elected, and remain unpunished by the house, when he could not but know him incapacitated in this double manner by the outlawry; why he remained unpunished for that offence against the laws of the land, by the house of commons; or why that house did not vote that man so returned incapable of being chosen, on this legal foundation, rather than by authority of the commons, will remain a secret inexplicable by common sense, and to sound policy. But whatever be the cause, he was nevertheless legally disabled from sitting in the house. They might then have issued a new writ for one member, and prevented all this clamour, outrage, and sedition which have since ensued; or voted Cook and Proctor lawfully elected, because Mr. Wilkes being an outlaw, was incapable by law of being eligible. For I hope those authors who are of a different

ferent opinion will *not* assert, that he, who is *ineligible* by law, is *eligible of common right*. The outlawry being reversed, Mr. Wilkes was then restored to the right of being elected, if he possessed the necessary qualification of six hundred a year: and other circumstances which I shall soon mention.

Such then was the legal disqualification of Mr. Wilkes, on the day he was first elected and returned. I will venture to affirm, that he was absolutely ineligible by statute on the day of his first election; and that to this day he remains in that incapacity. There is yet another cause of disqualification, of equal force in law with those which these writers have mentioned. This they have omitted to relate, for reasons which are too obvious to be disputed. And in proof of this declaration, I shall bring the statutes by which it is ordained. By stat. 1 Hen. V. c. 1. stat. 8 Hen. VI. c. 7. stat. 10 Hen. VI. c. 2. stat. 23 Hen. VI. c. 15. it is expressly said, "That they which shall be chosen knights of the shires, shall be *dwelling* and *resident* within the *same county* for which they are chosen; and either such notable knights, esquires, or gentlemen born, of the said counties, as shall be able to be knights; and no man to be such knight, which standeth in the degree of a yeoman or under." This ability hath been since explained and ascertained to be an estate of six hundred pounds a year. In what part of Middlesex was Mr. Wilkes *resident* and *dwelling*? *Where* lay this estate, of six hundred a year, in that county, or in any other? And if these circumstances did *not* exist, on the day of his being last elected, how was he eligible by law?

These statutes are still in full force. For by these it is that "the freeholders, under forty shillings a year, are disabled from voting; and those of that sum entitled to that privilege. And

“ by no other.” By these statutes it is determined, that “ sheriffs who return members contrary “ to the circumstances therein described, shall incur the pain of 100*l.* to the king, 100*l.* to every person chosen knight, and not duly returned, or other person who shall sue for it by an action of debt with costs. And he shall have imprisonment of a year, without being let to mainprise or bail.” And notwithstanding these statutes are still in full force, the sheriffs who returned Mr. Wilkes have remained unpunished, and even unnoticed, for that delinquency.

These statutes, therefore, being at this day of equal force, validity, and power with Magna Charta, the Bill of Rights, or any other statute in the realm, why are the conditions above related no longer binding on those who are candidates and representatives of this realm? Are they abrogated by the legislative power which enacted them? It is manifest they are not. By what power are they then no longer in use, or superseded? By that authority in the house of commons, which is unequal to that power, as these gentlemen assert with truth, when there are statutes expressly interdicting such resolutions. Shall then the house of commons accept and reject what parts of the statutes they please, in order to model them to their intentions? Shall Mr. Wilkes be pronounced to be elected according to the laws of England, when these laws do now stand in full opposition to that legality? Shall the law of the commons prevail over the acts of the whole legislature, to abolish the statutes which render Mr. Wilkes incapable of being chosen? And shall the *assertion* of his eligibility being not contradicted by law, which it is, prevail over the laws themselves, and the authority of the commons, where that authority is neither controuled nor prohibited by the express law

of the legislature? Surely this reasoning can find no advocates but in men who never had, or have now lost their senses or integrity.

The reasons which induced those advocates for the legal eligibility of Mr. Wilkes not to recite this and the former causes of disqualification among those they related, are now self-evident. It would infallibly have demolished all that they had to offer in favour of the common law over that of the house of commons. It would have proved, in consequence of the statute law being paramount both to common and parliamentary law, that Mr. Wilkes could by no kind of law be received a member of the house.

But that is not the sole cause which hath induced those who have written on the other side of the question not to take it up. The same statutes which make every knight of a shire to be necessarily living, dwelling, and having a landed qualification in that county for which he is chosen, make it necessary that every citizen and burghers of city, town, and borough be *resident, dwelling*, and free in the said places which he represents. These statutes, therefore, carried into execution, as they ought, would legally disqualify nine in ten of those burghers who now sit in parliament. For I am not concerned who sits, or who is disqualified, provided the constitution and the laws will justify it. It is *right* which I would seek, faction which I would suppress, and tranquillity that I would restore. If these gentlemen be then in earnest, when they contend that a man, *not* rendered ineligible by law, is still eligible, in opposition to the resolutions of the house, let them bring in a bill to revive the vigour, and support the positive and express law of the whole legislature against the usage of parliament. For hitherto there is no resolution which hath produced the disusage of these sta-

statutes, against the superior authority of which there can nothing be alledged, which ought to weigh a feather ; and we shall then be convinced of their patriotism.

Nor is there any thing more essential to the restoring of the rights, liberties, and privileges of Englishmen, than the *strict* observation of these statutes. And when an eminent commentator declared, that the strictness of the circumstances are disregarded ; and makes no comment on that neglect, he forgets himself, and the intention of his commentary : for the laws of England know no superiour strictness of one part above another, in the same law : nor admit of the observing one part and rejecting another. This would be to form a code destructive of the laws which it ought to establish and preserve. Were the citizens and burgesies to be dwelling and resident in the respective cities and boroughs which they serve, they would thereby be best known to their electors, and best acquainted with their wants, and propriety of their requests to parliament. They would be open also to their applause, when they behaved becoming the guardians of the people ; and to the eye of disdain, the tongue of censure, the actions of aversion among their constituents, when their deeds corresponded not with their dignity and duty. And this circumstance might hold men to that integrity, which they now neglect. At least it would greatly contribute to those motives which are the most coercive in restraining men from corruption, and encouraging them to virtue. The right of cities and boroughs, of electing their representatives from among themselves, and no others, is a privilege more estimable and beneficial than the whole right of election, separated from that particular circumstance. Wherever we turn our eyes, whether it be towards the law of parliament

ment or of the legislature, we see that the observance of them manifests their wisdom, and the neglect, our ignorance or folly. Nor are the representatives alone disqualified, who are not dwelling and resident in their respective counties. The electors also are rendered incapable of voting, unless they *reside* and *dwell* in that county for which they vote. What number of Mr. Wilkes's electors were disqualified by this want of residence, I know not; but this is certain, that such men can have no cause to complain of the deprivation of their right of election, for they had none. And all those who are voters conformable with the legal requisites, can have no just cause to complain that they have been deprived of their lawful right of election, by the disqualification of Mr. Wilkes, for he was not eligible by law. And therefore they can have lost no legal right by being unrepresented by a person not legally qualified.

Until some more convincing arguments shall be offered in favour of those opinions, which I am opposing, it must remain a certainty, that the men of Middlesex have not the least ground of complaint, against the resolutions of the commons, either as arbitrary or illegal: nor that they were precluded from their freedom of election, because a majority of their votes availed them nothing on that single occasion.

When the petition of the freeholders was presented to the house of commons, and even in every election succeeding the first, it was no longer a contention who should be the representative of Middlesex, but whether that house should preserve their constitutional right, coeval with their first existence, of determining the merits of their own elections, or relinquish it to the clamour of the populace, of those electors, who voted for Mr. Wilkes, and to the machinations of his abettors.

For

For this was, in reality, the situation of the contest, whatever may be the pretended purposes of those men, who, by the seductive sounds of *freedom of election*, were purporting to demolish, not only those who are in administration, but the constitution itself, if their intentions cannot be otherwise accomplished. So sincere and desperate is the lust of power, and so fallacious and inoperative are the vows of patriotism.

Such then having been, at all times, the constitutional right of the commons, to the exercise of that authority which disqualified Mr. Wilkes : to this trust the present members were consciously delegated by their constituents. What foundation then can the latter possess, on which to ground a complaint, that it has been carried into execution by their representatives, whom they have thus authorised to act ?

There is a narrowness of thinking, in that opinion which confines the authority of the house to the bounds of precedent alone, which is inconsistent with the idea of all legislative power. And there is a wildness in imagining, that the exercise of that power can be safely carried beyond the limits of that design for which it was originally established. The constitution has consequently permitted the energy of that power, unrestrained by express acts of the legislature, where it was expedient so to be indulged ; and it has restrained it, in such cases, where it might have been exerted with injury to the people. Precedents, therefore, though they are not the foundation of the authority of the commons, nor boundaries by which it is constitutionally restricted, may serve as paths, or indications of that road, which leads most safely through that wilderness of indefinite power. One writer has said, " it is our pillar of light by night, " and our pillar of smoke by day." But the rec-
titude

titude of following that pillar was neither in the smoke, in the light, nor in the pillar itself: it proceeded from the divine authority of that legislator who bade it to be followed. Nevertheless, as precedents are of utility, in all such parliamentary proceedings, I shall request your attention to what I have to offer, in proof, that all these precedents, which have been cited to the contrary, are fully evincive of the legality of that resolution, which has been voted in the case of the Middlesex election.

A gentleman, who has published his sentiments in opposition to what I have been advancing, has said, " that the power of the house to expel Mr. Wilkes, upon an accumulative charge of offences, was not called in question. But it was absolutely *denied*, that a resolution of the house of commons, declaring one of their members incapable by law, could constitute such a legal incapacity, as annihilated the votes of the freeholders." The same gentleman admits also, " that the law of parliament is as much the law of the land, as either statute or common law." If the law of parliament be as much the law of the land, as either of the others, as it has been proved, and disqualification be consecutive of the law of parliament, by what arguments will he prove, that the resolution of the commons, declaring one of its members incapable by law, cannot constitute a *legal* incapacity? The law of the house must, therefore, be an *illegal law*, if it cannot disqualify a member; or *disqualification* does not render a man *disqualified*. For such it is, if he be still *eligible* after disqualification. The preceding position is, therefore, too absurd to require a refutation. Nor did this resolution annihilate the votes of the freeholders: for it left them the amplest power of giving them to whomever qualified person they pleased, Mr. Wilkes excepted;

and he, it has been proved, was not a person qualified by the law of the legislature. And, therefore, this franchise of voting being exercised against law, is, as the same gentleman observes, "pro hac vice, forfeited."

But the same writer continues: "The right of voting in elections is a legal right. It is not given, and it cannot be taken away, by the occasional vote of either house of parliament; for every elector is under one or other of these qualifications. He is either a freeholder, or has it by charter, or by prescription. It is law which has enabled the crown to grant charters, and the law which maintains every right by charter. The right of prescription is by common law: for prescription is common usage, and common usage is common law. The estate of the freeholder is held and created by the common law; and the right of voting being of the essence of the freeholder, you may as well take away the freehold itself, as the right of voting, which accrues by virtue of that freehold." If this last part be true, when in the reigns of Henry IV. and V. the legislative power took from all freeholders, under forty shillings a year, their right of voting, they robbed them of something equal to their freeholds. Let those then who are so strenuous for the rights of the freeholders, restore, by a second act, what was unjustly taken by the first. We may then give credit to their zeal, that it is intended to support the cause of right.

It is surprizing to observe how words, ranged in a kind of argumentative method, are apt to deceive, not only those that hear, but those who deliver them. I have already proved, that neither prescription, common usage, nor all that is included in the word precedent, can afford the least right

right of being followed, unless they sprang from the origin of a just authority. They would be rivers without fountains, plants without seminal principles, and day-light without sun-beams. I shall then just observe on the justness of those arguments, in one particular; and then shew, by a transcript of the passage, that it is as logical and conclusive on the other side of the question.

This gentleman has said, the right of prescription is by common law; which is, that common law hath begotten prescription; and then he adds, forprescription is common usage: that is, that prescription and common usage are two names for the same progeny of common law; and then, strange to believe, *common usage* being *common law*, in plain English hath begotten *itself*. *Common law* is the father, and *common usage* is the son; and then *common law* the father, and *common usage* the son, are *one*. Then the begetter begets the begotten; the begotten begets the begetter, and both the begetter and the begotten are the same individual person.

I have heard of *prolem sine matre creatam*; and that Minerva, the goddess of wisdom, issued from the head of Jove: but the *wisdom* of this *logic* did not, I think, proceed from the head of a Jupiter.

I will now apply, precisely the same manner of reasoning, and the words as near as possible, to the right of disqualification in the house of commons: and if the arguments and manner of reasoning, be as fair and as full as those which were intended by the gentlemen who delivered the foregoing passage, I think he cannot well deny me the like conclusion.

The right of disqualification is a legal right; it is not given, and it cannot be taken away by the occasional vote of either house of parliament; for every member is under one or other of these qua-

fications ; he is either a knight of the shire, a citizen, or burghers, representative of some particular city or borough, has a right by charter or prescription. It is the law which enables the crown to grant charters, and the law which maintains every right granted by charter. The right of prescription is by common law ; for prescription is common usage, and common usage is common law ; the estate which qualifies the representative is enacted and held by the common law : and the right of adjudging all matters which may come before the commons relative to themselves, being of the essence of representation, you may as well take away their estate itself as the right of disqualification which accrues by virtue of being a member of the house of commons.

In this manner, from premises equally certain and constitutional, the same conclusions are as fairly to be drawn in favour of the law of the commons as of the common law ; nay, if prescription be common law, the right of disqualifying Mr. Wilkes is at once both common and parliamentary law ; for certainly disqualification is justified by prescription.

I admit, as the gentleman observes in the right of election, that the exercise of this right, is, in many cases restrained by statute law. He admits, also, as I have already remarked, that the law of parliament is as much the law of the land as either statute or common law. And thus he allows that the law, by which Mr. Wilkes was disqualified, is a law of the land. But then he avers that law is not a being of instantaneous creation. Indeed, according to his opinion, as the law creates itself, I do not know how long time it is engaged in that creation ; but it exists only in the known laws and usages of parliament. Thus the law exists in the law, which is as acute a discovery, as that life consists in being alive. By this assertion, that law is

not of instantaneous creation, he destroys the whole effect he would deduce from precedent. For not a precedent among those which have been brought in opposition to the right of disqualifying Mr. Wilkes, is there to be found, which was not as instantaneously created, as this very case on which we are debating. They were all made on the very occasions then before them, unprecedented and unprescribed, as I shall shew when I speak of them severally.

If this instantaneous creation, in the present case, be of sufficient validity to set aside the disqualification of Mr. Wilkes, it equally sets aside all those precedents on which they rely in support of their cause. For what was instantaneously created in former times, can no more be legal than what is made in an *instant*, in the present. And, therefore, these precedents which were not legally made, cannot be legally rules of action.

Thus there is an end of the argument which was derived from the instantaneousness of this disqualifying vote of the commons. That gentleman, therefore, in his endeavouring to sustain his opinions, and prove the rectitude of the measures he would defend, resembles a gardener, who, in order to have a greater quantity of fruit, is continually inserting the grafts of those trees which will bear none. Hence it appears, though the opponents of this resolution have been so sedulously attentive to the considering of the house of commons as a court of judicature alone, and not a legislative, that, even in this view, prescription, usage, and the law of parliament, evidently demonstrate the disqualification of Mr. Wilkes to be legal.

There is yet another gentleman who has asserted, " That the house of commons, acting as a
" court

“ court of judicature, have only a power of de-
 “ claring the restraints of common or statute law;
 “ the legislative alone, which is the united power
 “ of the states being king, lords, and commons,
 “ can exact new restraints.” This gentleman
 then denies the very concessions which are univer-
 sally made, that the maxims and methods of pro-
 ceeding, in all affairs relative to themselves, are a
 fundamental principle in the house of commons;
 and which is as constitutional as that power in the
 whole legislature, respecting the transactions of the
 community. He has, in like manner, annihilated
 the very existence of all his own arguments, de-
 duced from precedents, which he himself hath
 brought; and is like that farmer, who, in order
 to fertilize his lands by bringing streams to water
 them, has previously rescinded the source from
 which alone they must flow. If the house of com-
 mons have the power only of declaring the re-
 straints of common or statute law, then, when
 they made these precedents, which they allow to
 be valid, they made them either according to one
 or other of these laws; or they made them in con-
 sequence of their own legislative authority. But,
 unhappily for their advocate, no such laws, either
 common or statute do, or ever have existed. And,
 if they did exist, the disqualification of Mr. Wilkes
 would be supported by one or other of them. The
 house of commons, therefore, in making those pre-
 cedents, could not be restrained by common or sta-
 tute law, because they have made them. And
 this very gentleman allows them adequate and just,
 as far as they go; they were therefore made by
 the legislative authority of the house. The same
 power which legally voted these resolutions, at their
 several seasons and on different occasions, remains
 with equal energy now, as at that moment. For no
 man

man will be hardy enough to advance, that the house of commons hath declined in power since its first becoming a legislative body of this realm.

Both these gentlemen agree, "That whoever searches the Journals will find precedents almost for any thing." Why, then, consecutive of the doctrine of precedents, being the sole rule of conduct in the commons, these precedents will support almost any thing. This latitude of support is, therefore, a ground on which they cannot proceed, their friends, even the precedents, will intercept their march; and lie in ambuscade to defeat their expedition. Those precedents, therefore, which are not auxiliary in their cause; are for that reason to be deprived of arms, and rendered impotent. All such, therefore, are affirmed to have been passed "in the casual anger of the day, the atrocious corruption of the times, or are void of common sense." But in *their* opposing the present measure now debated, there is *no* anger, no corrupt influence of self-interest; all is the dictate of sound intellect, honest hearts, and impartial consideration. Thus, as the statute law was omitted, *not* to prove Mr. Wilkes disqualified, so even precedents must be rejected also, and those only which remain, are allowed to contain the energy of precedent: as if the dust of gold or dross, which passed the sieve, were not equally gold and dross in the parts which did pass through as those which did not.

In consequence of this method of reasoning, a conduct *right* in itself may, with ease, be proved to be *wrong*; and that which is *wrong*, to be *right*. For as all human measures are compounded of those ingredients; by omitting all that is *right*, *right* appears to be *wrong*; and by omitting all that is *wrong*, *wrong* appears to be *right*. But this artifice can never change the nature of things nor alter the efficacy of the arguments on either side,
when

when they are truly known. On this account, however active they may be to separate and invalidate the energy of those precedents which do not contribute to sustain their cause, the precedents themselves have all an equal right to speak for themselves; and to be considered *as* authoritative, authentic, and prescriptive.

It is amazing that men should so suddenly forget the principles which they have advanced. It has been declared by them, that the power of the house, to *disqualify* Mr Wilkes, was not called in question; and that, certain it is, that the house of commons is become the sole court of judicature in cases of election; how then shall we reconcile those contradictions? In what manner can the power of the house be equal to the disqualifying Mr. Wilkes, when they say it is to be *bound* by *familiarity* of precedent, if there be no such similar precedent? And if that house be the *sole* court of judicature, in cases of election, and it has only the power of declaring the restraints of common and statute law, how shall it examine and adjudge those cases, which do not come within the limits either of common or statute law? If what they assert be to be attended to, then must the commons effect impossibilities. Are they to act with plenitude of power, and yet be withheld from the exertion of that power by precedent? Are *they solely* to judge of all elections which may be brought before them, and yet to judge only according to the restraints of common and statute law, even in cases where no restriction or light can be derived from either of them? Then is the case of Mr. Wilkes incognisable by the house of commons. For neither statute, nor common law, have erected a light house, by which to guide them through the rocky seas of that transaction. The commons must, therefore, conduct themselves in this obscu-

obscurity like mariners, who, in such circumstances, discover the proximity to danger, by sounding as they proceed, and regulate their course accordingly. This case, according to those gentlemen, should be *examined* and *adjudged* by the commons, because they have proper powers for that purpose; and yet it should remain *unexamined* and *unadjudged*, because they are bound to the determining it, according to the restraints of common and statute law, and have not proper powers. This whole series of arguing is so replete with absurdities, that the moment they are indicated, they are refuted. And all this contradiction and sophistry arise from the same cause. They labour to prove, that the commons are a court of judicature alone; and every instance they adduce, certifies that it is a legislative also. They struggle to prove it circumscribed by common law: and the experience of all ages, the records of parliament, and the opinion of the best law-writers, disprove all that they aver. As these are inseparably connected in all the transactions of that house, whilst, like rowers, they tugg to get clear from what they wish to be freed, and which is inseparably attached to their boat, they necessarily bring it along with them, and arrive at the same place together.

That nothing may remain unanswered, I will now examine these precedents which have been brought to prove, that, through *want of similarity*, they will not justify the disqualification of Mr. Wilkes.

The gentleman whom I have in view; who has recited the legal disqualifications of a subject to sit in the house of commons; and, in this faithful relation, hath omitted the statutes, and the circumstances which do really disqualify Mr. Wilkes, and many of his electors, hath, nevertheless, given it as his opinion, " that these are

“ the only restraints at common law, on the rights
 “ of the electors, to chuse whom they please.
 “ Books, says he, of the first authority have laid
 “ down these, and, in exprefs words, declared all
 “ other persons eligible. And this is the general
 “ rule, and the natural right of every subject,
 “ not disqualified by law.” But does he intend
 by this declaration to assert, that all who are eli-
 gible by law, and have been elected, are not to
 be disqualified by a resolution of the commons?
 If this be the meaning of what he has advanced,
 the journals of the house, the records of parlia-
 ment, books of the best authority, and even the
 writings of Sir Edward Coke, declare the con-
 trary, and he is manifestly mistaken. For in these
 there are various instances of men disqualified by
 the house of commons, who were elected accord-
 ing to law. And he himself has exemplified this
 truth by the precedents which he hath brought.

But it seems, at length, that an exact similitude
 of circumstances is *not* the *only* requisite which is
 now demanded for justifying the disqualification of
 Mr. Wilkes; “ they must be supported by good
 “ sense and reason.” And were these advocates
 to be the sole judges of those qualities in this af-
 fair, it would be easily seen in what manner their
 good sense and reason would decide this question.
 The same gentleman has been pleased to say,
 “ that he is tempted to give a very particular case,
 “ in which will be seen the effect of a resolution
 “ of the house of commons, repeatedly taken,
 “ upon much deliberation, in opposition to good
 “ sense and reason, common usage, and the rights
 “ of the electors.” Had this gentleman possessed
 but half the resolution of St. Anthony, he would
 not have listened to this tempter; for the cloven
 foot is very visible, and it has misled him. On
 this particular case, he tells us, “ that it is the
 “ opi-

" opinion of lord Coke, that by special order of
 " the house of commons, an attorney-general is
 " not eligible, though by law he was eligible."
 Thus then all the books of the first *authority*, do
 not lay down, that all persons qualified by law,
 are eligible ; for surely the books of Sir Edward
 Coke lay down the contrary. Men who are sup-
 porting a bad cause, should have better memories.
 This instance, however, " has, he says, induced
 " others to assert, that the house can make a spe-
 " cial order when it pleases, and thereby render
 " those ineligible, who were eligible before." If
 other men have been induced to conclude in that
 manner, they have, like this gentleman, in va-
 rious instances, drawn an inference, which those
 premises will not warrant. There are many rea-
 sons to be offered, why an attorney-general, at that
 time, should not be a member of the commons,
 which are inapplicable to the representatives in ge-
 neral ; and therefore all that can be legitimately
 deduced from this case is, that the house, by spe-
 cial order, could then render an attorney-general
 ineligible, who was eligible by law ; because it was
 contrary to common usage of parliament, that he
 should be a member. Such a man, this prece-
 dent fully proves, the house have a right to dis-
 qualify : and therefore it ascertains, that the par-
 liamentary authority is superior to the common
 law, and the rights of the electors, in Coke's opi-
 nion. The reasons then which are offered for this dis-
 qualification are replete with good sense and argu-
 ment. It was done, because, being dependent on
 the crown, they considered him as a man the more
 liable to obey the dictates of power. " This, in-
 " deed, he says, would be a very extraordinary
 " power. And since it seems to have been ad-
 " mitted, at least in one case, by one who was
 " great in parliament, as well as in the courts of

“ justice ; and if it be good law in one case,
 “ must be good law in others, it becomes neces-
 “ sary to examine the authorities on which it is
 “ founded. They are these : The eleventh of
 “ April, 12 Jac. after much debate and search of
 “ precedents, the house resolved : first, That the
 “ attorney-general shall for *this parliament* remain
 “ of the house. Secondly, that after *this parlia-*
 “ *ment*, no attorney-general shall serve as a mem-
 “ ber of this house.”

In answer to this question from the record, and the parliamentary history, it appears, that the attorney-general was not eligible by the common law ; nor by the prescription and common usage of parliament : it had never been, that an attorney-general had ever sat in the house. There was then no precedent for an attorney-general being a member. That officer was, therefore, to be disqualified in all future parliaments. And this is exactly corresponding with the very arguments which these gentlemen have offered in favour of Mr. Wilkes. There is no precedent, as they affirm, for the disqualifying Mr. Wilkes ; and therefore he ought to be a member of the commons. If the want of precedent be a sufficient reason for the *not* disqualifying a man, the same *want* of precedent is sufficient also for the not admitting an officer, who had never been a member, or the whole support of their pile is demolished.

To the preceding passage, the gentleman subjoins : “ The inconsistency of these resolutions is
 “ wonderful ; and the only proper use to be made
 “ of them is drawing this salutary doctrine, that
 “ where power goes beyond right, it finds no
 “ resting place.” But in this it happens, that the commons had not gone beyond right. For the attorney-general being not *dwelling* and *resident* in the place which he represented, was expressly dis-

qualified by the statutes of Henry V. and VI. Next, he was not eligible by the common law, nor by the common usage of parliament : for no attorney had ever been antecedently a member of that house ; and, therefore, the rights of the electors were not violated. For the law of parliament has been proved to be independent, and even superior to common law ; and, consequently, that salutary doctrine, which the gentleman asserts, can alone be properly drawn from the resolutions of that house of commons, is, in no sense, to be drawn from it, unless conclusions can be deduced from premises which never existed.

Lastly, there is no just ground for the imputation of inconsistency in these resolutions. The attorney-general had been chosen contrary to the usage of that house. It was a new case, and considered as an usurpation on the rights of being elected, and as an introduction of more dependents on the crown. But as he *was* chosen, it was imagined that a disqualification of the *officer*, might be considered as an injury to the *man* ; they therefore permitted *him* to remain, and disabled all other attorneys general from sitting in the house. In this manner the inconsistency disappears ; the whole affair is reconcileable to good sense and just moderation ; and all the conclusions which the gentleman has drawn from this affair, are refuted.

“ This order, made as above, was confirmed at the
 “ next meeting of parliament. Six years after,
 “ a new writ was issued to elect a member in the
 “ room of the attorney-general ; and in 1625, a
 “ new writ is ordered to issue to elect a member
 “ in the room of Sir Robert Heath, attorney-general.” Hence it appears, that in both these parliaments the attorney-general had been chosen, and in both disqualified. And this precedent, three times established, the gentleman has brought

to prove, that the house of commons had no right to disqualify a member of their house, who, he says, was eligible by law.

All that can be drawn from this case, according to the position of that gentleman, *that the attorney-general was eligible by law*, is, that it affords a precedent, that the commons can disqualify, by the law of that house, a person qualified by the law of the land. And in this manner, by proving the contrary, he has attempted to demonstrate, from the journals of the house, and the works of lord Coke, that all the books of the first authority are in evidence, that a man, eligible by the law of the land, cannot be rendered ineligible by the law of the commons.

But should the inconsistency be allowed, is it thence to be inferred, that the commons are no longer to possess the legislative power, because it was inconsistent, and exceeded the limits of their authority? In every excess of that kind, the authority is allowed, though the exertion be excessive. I am afraid, that an indiscriminate reception of this argument will lead to conclusions which that gentleman can hardly accede to. For I suppose that all legislative authority is to be considered in a like view. Let me try it in that of this kingdom. The Jew act, the cyder act, the stamp act, were made in one session, and abrogated in others. And when the last was repealed, it was enacted, that the legislature of this kingdom had a right to tax the colonies. Thus the same spirit which had been roused in America by that act, and for the quelling which it was abrogated, was still kept active by the law that voted the right; and in another session, duties were imposed upon them, in consequence of the last act, though it was seen that this last act had prevented their being tranquillised. And thus the mischiefs, for the extirpa-
tion

tion of which the act was repealed, were again repeated, by a new law to the old purpose. If inconsistency can disqualify a legislative power from acting, what will become of the legislature of this kingdom?

I shall now lay before you the other cases which are brought to prove, that there is no precedent of disqualification on which the resolution that disqualified Mr. Wilkes can be founded.

The first instance which is brought, as a precedent, is that of Arthur Hall; and it is, that, 14. Feb. 1580, Arthur Hall was removed, severed, and cut off from being a member during *the continuation of that parliament*.

The next is 15 Feb. 1584, of Dr. Parry, who was disabled to be any longer a member of that house.

On these the gentleman remarks, "that some precedents destroy themselves;" and the arguments he has brought commit suicide also. He then adds, that "no sober man will rely on the authority of proceedings, in which there appears a manifest abuse, a daring illegality, and a slavish submission to power. Such precedents are vicious in the whole, as well as in part." And when was there a precedent *all* vicious, that was *part* otherwise? However, "they ought never to be quoted in order to be followed. Hall's offence was for reflecting on the proceedings of the house, publishing a discourse to the diminution of its authority, and asserting, among other things, that the house had judged and proceeded untruly. For this offence, the house thought proper, in addition to the punishment already mentioned, to impose a fine; to set that fine at no less than 500 marks, a very great sum in those days; to imprison him for *a time certain*, six months, and from thence till he should make
" a re-

“ a recantation. Unless therefore we are inclined
 “ to maintain the authority of the house, to fine,
 “ and in what sum it pleases, and to imprison as
 “ long as it pleases, without any limitation to the
 “ continuance of the sessions, we must reject the
 “ precedent, as an instance only that the house of
 “ commons may be led, by the intemperance of
 “ passion in pursuit of its own dignity, and the
 “ punishment of those who offend against it, to an
 “ abuse of the power, and the exertion of authority which it has not by law.”

In his representation of this case, as a proper precedent not to be followed, would not a man, who was uninstructed in that of Mr. Wilkes, imagine that he had been fined and imprisoned, as well as disqualified, by the resolution of the commons? But as neither of these has been done, the precedent relates to disqualification, and not to the excess of punishment. And when I shall shew you that this gentleman has, with ensnaring artifice, blunted the asperity, omitted, or misrepresented the circumstances which make against Mr. Wilkes, and heightened those in his favour, will it not be seen that, conscious of a defeat by a true representation, he hath altered the likeness?

This precedent, he says, must be rejected, “ if
 “ we are not inclined to maintain the authority of
 “ the house to fine in any sum it pleases, and to
 “ imprison as long as it pleases.” And is it not rejected, respecting this power of fining and imprisonment? Where has it been applied in the case of Mr. Wilkes? He has been neither fined nor imprisoned by the house. Shall the authority of the house of commons be rejected, for the disqualifying Mr. Wilkes, because it contains no single article of that which this gentleman declares to be a *manifest abuse*, a *daring illegality*, and a *slavish submission*? Of all which, so roundly asserted, he
 neither

neither has nor can prove the abuse, the illegality, or the slavish submission. There can be *no* abuse of legal *power*, where *no law* restrains the exerters from carrying it into execution. That *cannot*, therefore, be a daring *illegality*, which is the *breach* of no law : and *submission* to that power, to which the person must submit, is not slavish. Let him then shew me the laws by which the exercise of this power is restrained. But how will he accomplish that request, when it is now acknowledged that the house of commons are the sole judges in their own affairs : and that the methods and maxims of proceeding are in their own breasts ? Such then is the effect of declamation without argument. Is the authority of a court of judicature to be rejected, because it has made bad precedents ? What then would have, long since, proved the fate of the law-courts in Westminster-hall, and of all Europe ? As this case of Mr. Hall appears to have been represented by this gentleman on purpose to delude, I will state it fairly from the journals published by Sir Simon D'Ewes. " This Arthur
 " Hall was a member for Grantham. He had
 " published a *libel*, containing matters of infamy
 " of sundry good *particular members* of the house,
 " and of the whole state of the house in general,
 " and also of the power and authority of the house ;
 " affirming that he knew, of his own knowledge,
 " that this house had *de facto* judged and pro-
 " ceeded untruly. To all which things the said
 " Mr. Hall could make no reasonable answer of
 " deniable.

" Upon examination in the house, he had de-
 " nied his having more than one of these books ;
 " but it was proved he had *twelve* or thirteen.
 " Mr. Hall being summoned to attend, and with-
 " out the door, it was moved that he might be
 " called to answer unto those points before the

“ whole house. Mr. Hall was brought to the
 “ bar, where, after some reverence done by him,
 “ though not yet in such humble and lowly wise,
 “ as the state of one in that place to be charged
 “ and accused requireth: whereof being admon-
 “ nished by Mr. Speaker, and farther by him
 “ charged with sundry of the said parts collected
 “ out of the said book, he submitted himself to
 “ the house, refusing to make any answer or de-
 “ fence at all to the matter, but acknowledging
 “ his errors, prayed pardon of the whole house
 “ with all his heart; and that done, was seques-
 “ tered.

“ After which, upon sundry motions and argu-
 “ ments had, touching the quality and nature of
 “ his faults, and of some proportionable forms of
 “ punishment for the same, it was upon the ques-
 “ tion resolved by the whole house, without any
 “ one negative voice, that he should be com-
 “ mitted to prison. And upon other several ques-
 “ tions it was resolved, that he should remain in
 “ the prison of the Tower for the space of six
 “ months, and so much longer as until he should
 “ make a retraction of the said book, to the satis-
 “ faction of the house, or of such order as the
 “ house shall take for the same, during the conti-
 “ nuance of this present parliament; that a fine
 “ of 500 marks should be assessed on the said Mr.
 “ Hall; that the said Mr. Hall should be severed
 “ and cut off from being a member of this house
 “ any more during the continuance of this present
 “ parliament; and that Mr. Speaker should direct
 “ a warrant for a new burges to be returned unto
 “ this present parliament for the borough of
 “ Grantham, in lieu and stead of the said Robert
 “ Hall, so as before disabled, to be a member of
 “ the house.

“ Mr.

“ Mr. Hall being sent to the Tower, it was
 “ agreed, upon a motion made by Mr. Speaker,
 “ that the whole course and form of the said pro-
 “ ceedings and judgment of the house against the
 “ said Mr. Hall should be afterwards orderly di-
 “ gested and set down in due form, to be first
 “ read to the house, and then so entered by the
 “ clerks, as the residue of the orders and proceed-
 “ ings of the house in other cases are used to be
 “ done. And so it was afterwards drawn into
 “ form, read unto the house, and entered by the
 “ clerk accordingly ;” and is to be seen in the
 journals above-mentioned. I shall now relate to
 you the case of Mr. Wilkes, in order that the ana-
 logy between the two cases may be the more clearly
 discerned.

Mr. Wilkes had published a paper called the
 North-Briton, and a book entitled An Essay on
 Woman. The first was voted a libel by the house,
 and he was expelled. He fled from trial by his
 peers, remained abroad, and was outlawed. At
 the dissolution of the parliament he returned, and
 was elected knight of the shire for Middlesex. He
 was returned to the house, and expelled by this
 parliament also. He was re-elected, and brought
 before the house, for writing and publishing an in-
 troduction to a letter of lord Weymouth's, secre-
 tary of state. He confessed the fact, defended it,
 and was disqualified from sitting in the house of
 commons for this parliament.

I shall now observe how those two cases agree
 in several points. Mr. Hall's book was voted a
 libel, so was the North-Briton of Mr. Wilkes. Mr.
 Hall acknowledged his error, and begged pardon
 of the house. Mr. Wilkes for the North-Briton
 neither acknowledged his error, nor asked pardon ;
 and for the introduction to lord Weymouth's let-
 ter, which was voted a libel, he acknowledged

and supported the act with much hardiness. Mr. Hall was imprisoned, fined, and disqualified. Mr. Wilkes, for the first offence, was expelled the house, for the second disqualified; and neither fine nor imprisonment were resolved by the commons. It is impossible that the offences of two persons can be more parallel, and their conduct respecting the commons more dissimilar. Both were libellers, both members of parliament, and both disqualified, with this difference in the result, that Hall, with the submission he made, was nevertheless fined, imprisoned, and disqualified for life; and Mr. Wilkes, without sign of submission, was disqualified alone. This then is a case in point, as far as it goes. I shall observe on the subsequent part of Mr. Wilkes's case, when I come to speak of the charge of his being twice punished for the same crime.

And here I will leave it to the candid judgment of all mankind, whether several circumstances of Mr. Hall's disqualification were not purposely omitted, others misrepresented and softened by this gentleman, through consciousness at the striking similitude of that transaction, with this of Mr. Wilkes. Why was the offence of Hall so gently termed a *reflection on the proceedings of the house*; his book a *discourse to the diminution of its authority*; and those circumstances omitted which are expressed in the Journals, that he had published a *libel*, containing matters of *infamy* of sundry good particular members of the house and of the whole state of the house in general? When men pretend to defend the rights of the electors and the elected, and knowingly decline from representing the truth of those precedents, which they confessedly are acquainted with, and would derive some little aid, by relating part only of that whole which would refute their arguments and depress their cause, what shall we think

of their integrity? And who will, henceforth, pay the least regard to the reasoning of that man who warps, rescinds, softens, and misrepresents all that can oppose the cause he pleads for; wresting every thing to his purpose, by every violence which can be exercised in argumentation? On this analogy of the case of Mr. Hall with that of Mr. Wilkes, I might safely rest the whole refutation of what that gentleman has offered. It was undertaken without anger, unsustained and unsupported by party, debated with temper, and resolved on with deliberation; it is inserted in the Journals of those times, as being a new case, and stands a more than common precedent of authority to guide the conduct of succeeding parliaments.

“ Dr. Parry was charged with high treason ;
 “ was probably a madman ; but, if he had been
 “ ever so sober, the conduct of the house of com-
 “ mons towards him was enough to make him
 “ mad. For, while he lay under the charge *before*
 “ *his trial*, that house paid its servile court to the
 “ queen, by prejudging the sentence of the law;
 “ and praying her leave to pass a bill for his ex-
 “ ecution, after conviction, in such a manner as
 “ might be fittest for his extraordinary and most
 “ horrible kind of treason. There is in this pro-
 “ ceeding an inhumanity towards the criminal, as
 “ well as an abject servility towards the crown,
 “ which will, I trust, prevent its being ever quot-
 “ ed as a precedent, to be followed by any house of
 “ commons.” Does the gentlemen intend, by thus
 ascribing madness to Parry, and arguing against the
 legality of his disqualification, that madmen ought
not to be expelled and disabled from sitting in par-
 liament ; and, therefore, that Mr. Wilkes should
 not have been disqualified? Does he mean that
 this treatment of the house, which happened *after*
 his disqualification, was sufficient to make him mad
before ;

before; when he committed the offence for which he was disqualified? It is necessary to ask those questions; because, without an explanation, the meaning may be misconceived, and asserted to be falaciously represented.

I sincerely join in this opinion of the inhumanity, and servility of the house of commons to the crown. I am convinced it will not be followed by the present parliament. And I congratulate my countrymen, that, from those preceding instances, compared with their conduct respecting Mr. Wilkes, that offenders, who may be justly disqualified, will not be either fined, imprisoned, or treated with those acts of inhumanity in the reign of George the Third which disgraced the reign of Elizabeth; and yet that queen is called the great and strenuous protector of the rights of the subjects.

Were she now living, not only Mr. Wilkes had been imprisoned, but that member who should presume to defend his cause, had been taken from the house and committed to the Tower; as several were, for opposing her will. From those proceedings in her applauded reign, and from the acquiescence of the nation, brought in comparison with the present, of his majesty, it appears too visible that the people of England have been almost uniformly inclined to become slaves to the *worst*, and *rebels* to the *best* of their sovereigns. No clearer evidence can be brought of *liberty improved* among the people of England, than the *lenity* of the present parliament compared with the asperity of those of which I have been speaking.

“ 21 June, 1628, Sir Edmund Sawyer was, by
 “ *three separate resolutions*, expelled, committed to
 “ the Tower, and declared unworthy ever to sit a
 “ member of that house. His offence was tam-
 “ pering with a witness, one Dawes, and advising
 “ him, as he was not on oath, not to tell the house
 “ what

“ what he knew of the matter wherewith Sir Edmund Sawyer was charged.

“ 9th Nov. 1640, The house availed itself of the temper of the times, and, relying on the general discontent at the abuse of the prerogative, came to a resolution, as insupportable in law, as that abuse which it pretended to correct. For it resolved, that all projectors and unlawful monopolists should be disabled from sitting in that house: and, 21 Jan. following, declared Mr. Sandys, Sir John Jacob, Mr. Webb, and Mr. Wyndham, within that order; and, therefore, persons who ought not to sit in that parliament: but this is to be attributed to the *temper* of the times, and the *discontent*, at the abuse of *prerogative*.” The gentleman who has delivered these expressions, and the abettors of Mr. Wilkes, do not rely on the temper of the *present times*; nor have they entered into a resolution, as insupportable in law as that abuse which it is pretended to correct.

“ 27 May 1641, John Taylor was expelled, and made incapable of ever being a member of that house, for having declared, that to pass the bill of attainder of lord Strafford, was to commit murder with the sword of justice.” And certainly the lips of no man have pronounced an expression more evidently proceeding from the fountain of humanity, justice, and truth; and yet this upright man was disqualified.

“ 30 Octob. 1641, Fitzwilliam Coningsby was resolved to be a monopolist within the order, 9 Nov. 1640, and a new writ issued.

“ 2 Nov. 1641, H. Benson was declared unworthy and unfit to be a member; and that he shall sit no longer. He was sent for as a delinquent, a new writ was ordered; and then, by *another resolution*, he was declared unfit and incapable

“capable ever to sit in parliament ; or be a member of that house hereafter. His offence was granting and selling protections.

“2 Feb. 1641, Sir Edward Deering was expelled and disqualified, for publishing a book, called A libel against the honour and privilege of the house.

“9 Mar. 1641, Mr. Trelawny was *expelled* and *disabled* to sit as a member of that house during that parliament. It was for denying the power of the house to appoint its own general.” I shall make no observation on the great number of persons expelled in those times of discord and confusion, which soon followed the expulsion of the last.

But the gentleman has been pleased to add, “Stopping, therefore, with the year 1641, and not going up to those shameful precedents of Mr. Hall, and Dr. Parry, we have seven precedents of the house exercising a power of disabling, by express sentence.”

Now the shamefulnes of these precedents consists, according to the declaration of this author, in the fine and imprisonment of Hall beyond the sessions of parliament, and of the servility of the house to queen Elizabeth ; and not in the disqualification. For Hall had shamefully libelled the house and several members, expressly ; and Parry had been guilty of treason, which that writer acknowledges can disqualify a man by law. And as neither fine nor imprisonment have been resolved on by the house, respecting Mr. Wilkes, the shamefulnes of those precedents has nothing in common with that of Mr. Wilkes’s disqualification : and therefore, they can offer no argument against that part of it with which it has no analogy. In what manner nine cases, confessed and brought as precedents, can be *no* precedents at all : or how that

that number can be but number seven, I do not comprehend. Nay, those seven precedents are afterwards reduced to five, because two of them are illegal. Thus, *nine* precedents brought by that gentleman to prove the *dissimilarity* of the cases with that of Mr. Wilkes, are *but five* when they *prove* the similitude. They would, therefore, at once, apply those instances and allow them valid, where they correspond with their designs ; and disallow them, where they do not ; the absurdity of which I have already shewn. And yet such is the truth, that more than twenty can be brought from the records of parliament. But it is needless to enumerate them ; for if these are insufficient, no number can be enough. Sir John Falstaff, indeed, made eleven buckram men out of three, demolished seven of them, and yet they remained all alive. This gentleman has proceeded in a direct contrary way ; he has begun with *nine* precedents, as real and valid, and then demolished *four* of them ; and yet the whole *nine* remain in full vigour. Now if the plump knight could *not* kill men who *never* existed, so this gentleman can *never* demolish things that are *past*, any more than he can put William the Conqueror to death, who died so many ages before this advocate was born.

On these *nine* precedents, which are *but five*, he says, “ he is sufficiently composed upon this matter, and trusts to those barriers which are visibly marked in our constitution, and has no fear of any weight of precedent that can be brought against him.” I am glad the gentleman is so composed upon this matter. I hope nothing which I shall say will discompose so good a logician. But, methinks, the *visible mark* of a barrier can hardly defend him from the *weight* of precedent. The *mark* of a barrier is no very strong thing. And I suspect the gentleman means boundary.

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but how are these boundaries so visibly marked, when the maxims and methods of the house of commons are in their own breast, when undefined and unascertained by law? And hitherto there has no law been mentioned restrictive of that power in this case. But this gentleman has so frequently mistaken one thing for another, that were I to remark the whole number, it would tire me in writing, and you in reading.

To the preceding he adds, "But let the whole list he supposed to apply, and with full effect, they are a *scanty number*, to support so extraordinary a power." I will add one more, however, 8th Eliz. Thomas Long was, *secundum legem et consuetudinem parliamenti*, as Lord Coke expresses it in this very case, removed for bribing, with four pounds, the mayor of Westbury, in Wilts, to return him the representative of that borough. The value of all things has, indeed, been much advanced, since that time; but nothing is so risen in price as corruption. And yet Sir Edward Coke is simple enough to say, "That this corrupt dealing was to poison the very fountain itself." Should I infer from the present dearness of this poison, that less of it is *now* applied than at the preceding time, I am more than apprehensive that I should be mistaken. For, contrary to all the maxims of commercial knowledge, this commodity has encreased in value, in proportion, as more of it hath been brought to market. When Don Quevedo, in his Vision, tells the Devil, That there was but a scanty number of kings in hell: the devil replies, I know not what you call a scanty number; but they are all that ever existed. The Don was satisfied that the scantiness of the number was owing to there being no more to make it larger. But this gentleman, finding the number to be so small, declares that those precedents

are not sufficient to sustain the cause of disqualifying Mr. Wilkes ; though there are no more to be found, and not one precedent which can support the election or the admission of a disqualified person into the house of commons. He that in search of precedents will not be satisfied with all that can be brought against him, must be a very unreasonable man, indeed.

This writer is pleased to deliver his opinion, that “ were he to admit this power, in any case, it “ should be where the house exercised a criminal “ jurisdiction in offences properly within the cognizance of the house, and punishes *at it's discretion.*” Hall and Deering were disqualified for libels. Mr. Wilkes is disqualified for the same. Is not then a libel an offence which comes properly within the cognizance of the house ? But he says, if, in support of such a case, “ he saw a strong “ uniform custom from the earliest times, he “ might lament the uncertainty of human discretion, which, while it punished the offender, “ was inattentive to the rights of the innocent.” It seems a strange kind of reason for lamentation, that of lamenting the *uncertainty* of human discretion from the strong uniform custom of the earliest ages ; for I protest I cannot see how a uniformity of custom can be a mark of the uncertainty of the discretion which establishes it. Does he pretend that Mr. Wilkes is innocent of a libel, who by a legal trial has been found guilty of four of them ? But to this he subjoins, that in the above case, he might “ deem himself precluded from disputing “ the validity of such a custom ; and might hold it “ safer to be consistent, and *stare super vias antiquas,* “ than to render every thing uncertain by departing “ from an established custom.” And why did he depart from this consistency ? The *viæ antiquæ*, of custom in parliament, uniformly prove that the house has a right to disqualify its members ;

bers ; why, then, did he not stand upon that ancient way ? Why, really, the way was not what he liked ; and, therefore, he chose to take another.

But he says, “ fortunately there is no such usage “ in support of this power : ” and yet he has brought nine precedents which prove that usage. However, those precedents which are good for nothing in support of that usage, are, “ in a supreme “ court, which cannot be controlled, and acts without appeal elsewhere, are good authorities for what “ that court *cannot do*, or *ought not* to do ; but “ they should be taken with mistrust, when they “ are brought to prove what it *can do by the “ fullness of its power.* ” Here, then, the gentleman who has all along asserted, that the house of commons *cannot* disqualify a man who is eligible by law, declares that it is a supreme court, uncontrollable, and acting without appeal elsewhere. And what is yet more amazing, the precedents of its usage are not *authorities* for what it *can do*, but for what it *cannot*. Was there ever a precedent brought of what *has been* done to prove that a thing *cannot* be done ? And would not a judge and jury be justly deemed mad or worse, who, from the common usage, of felons being doomed to *death* by the law, should thence conclude that this usage is good authority for what the court *cannot* do ; and, therefore, bring in a criminal at the bar not guilty, because there is no appeal or controul in any other court. This is, certainly, the first time that a precedent it been asserted to prove the contrary of what it says. If this be the case, then all the precedents that they have brought, to prove that Mr. Wilkes was not disqualified according to precedent, are good authority for the contrary, and he is justly disqualified. When a number of precedents is thought of strength sufficient to disprove the justice of disqualifying Mr. Wilkes, through want of similarity, these precedents are to be made as strong

strong as possible ; and when it is seen that these nine agree uniformly in the article of disqualification, they are reduced to five, to make them as weak as possible. But then again the whole number, which is too scanty to establish that power of disqualification, in which they all agree, are good authorities for what the commons *cannot* do. I am weary of following the sentiments of this freeholder through this morass of absurdities, into the mire of which he is sinking every step he takes. And yet I must proceed to the rest of his precedents.

The gentleman observes, " that by stat. 7 Hen. IV. elections must be freely and indifferently made, notwithstanding any request or commandment to the contrary." And by the statutes of Hen. V. and Hen. VI. a knight of the shire must be resiant and dwelling, and have six hundred a year in the same county.

The next case of disqualification is that of Mr. Walpole. He was first expelled, and on a re-election disqualified. After this, he never stood a candidate during that parliament, and the electors presumed not to elect him. Mr. Taylor, indeed, who had not a majority of votes, and who opposed Mr. Walpole when he was a candidate after his expulsion, was not the sitting member. But this was because expulsion was not decided to be a disqualification. But Mr. Wilkes was disqualified before he was re-elected by the last majority ; and being disqualified by the house, he was incapable of receiving the votes of the electors ; or disqualification, as it hath been already said, can mean nothing. Mr. Wilkes, respecting his right of being elected, was a nonentity, and their votes, in law, were given to no body ; and therefore Mr. Lutterel was legally admitted. All these precedents are declared by the gentlemen, who have delivered their sentiments on the other side,
to

to be of no efficacy, because they correspond not in every point with the case of Mr. Wilkes. But unhappily for these advocates, all those precedents agree in and pronounce, that there is *no need of similarity* in cases to disqualify a member. Hall was disqualified for a libel; Parry for treason; the attorney general for being a placeman; Sawyer for tampering with a witness; Sandys and the rest for being monopolists; Taylor for saying that the attainder of lord Strafford was committing murder with the sword of justice; Benson for granting and selling protections; Deering for publishing a book (which was another *libel*) against the honour of the house; Trelawny for denying the power of the house to appoint its own guard; and Walpole for malversation of the public money. All these precedents which they have brought, but two, those of Hall and Deering, (and these are the same with that of Mr. Wilkes, in the cause as well as the consequence) are dissimilar; and therefore cannot be brought as precedents for one another. The second is unlike the first, the third unlike the second, and so on to the end; and therefore these cases being individually without a precedent, *neither* of them is *lawful*, according to these gentlemen. But it so happens, that each of them being attended with disqualification, and being resolved without a similar precedent, they prove, that, by common usage, the house of commons has a just authority to disqualify any man without a similarity of precedent, though eligible by law. And this is fairly derived from every precedent which they have offered; for, different in the causes, they all agree in the effect, and conjointly prove the power of disqualification, let the diversity of offence be as various as it may. Mr. Wilkes was therefore disqualified according to the ancient and known usage of parliament.

I will

I will now consider the case of Mr. Wilkes, in that part which is unlike to all the former. And this is, his re-election after disqualification. For the *non-admittance* of such a member, they say, there is *no* precedent. But where is *the precedent* for the *admission* of a member so elected? If all the precedents prove, as they do, that no man has been elected or received after disqualification, and none prove that, in such a situation, any man has been either elected or received; if no law ascertains this right of election, and by the usage of the commons, who are the sole judges in this case, so many members have been disqualified, on what do they ground their right of Mr. Wilkes's being admitted a member? All precedents proceed to disqualification; none to a re-election. Precedent, therefore, declares nothing either for or against that particular circumstance, in the case of Mr. Wilkes. The whole affair, therefore, either stops at his disqualification, where all others have stopped: or, through want of precedent on either side, returns to that authority of the house of commons, which gave validity to all the former precedents. It did so return; the electors petitioned the house, and the members have examined and re-judged the case. They have confirmed the resolution which disqualified Mr. Wilkes, and have voted Mr. Lutterel the sitting member. If a want of similarity *only*, in precedent, can destroy the force of it on one side, does not the want of all precedent as certainly destroy all force of arguments on the other? Consequently Mr. Wilkes was disqualified according to this very reasoning, which his advocates have offered to prove the contrary, the want of precedent to admit him.

Another writer, after much fruitless attempt to prove that a man, eligible by law, cannot be rendered ineligible by a vote of the house of commons,

mons, and who acknowledges, that "the law of
 "parliament is the law of the land, equal with com-
 "mon and statute law, is pleased to ask, "where
 "was the freeholders of Middlesex to find the le-
 "gal incapacity of Mr. Wilkes? Is it in the
 "common law? No." But I affirm, that if com-
 mon usage and prescription authorise their being
 followed in common law, the precedents which
 have been brought do uniformly pronounce, that
 disqualification is the common law of parliament.
 And Sir Edward Coke has shewn, that the law of
 parliament is superior to the common law. And
 therefore, as no inferior court can make a prece-
 dent for a court superior, common law can neither
 give nor refuse any right to Mr. Wilkes, when dis-
 qualified by the house. He then asks, "is it in the
 "statute books? No." To this I answer in the af-
 firmative; and the truth of it has been already prov-
 ed by the statutes of Henry V. and VI. He then asks,
 "is it in the journals of parliament? No." To which
 I again answer it *is*. For every precedent which
 they themselves have brought has proved it. And
 thus these three questions, answered by him in the *ne-*
gative, are all positively affirmative of the con-
 trary. And now I shall presume to lay down this
 maxim, which is the reverse of what he has deli-
 vered: that every man must *lose* his right of
 election by law, when those laws exist which he
can and ought to know, whatever be his ignorance
 of the matter. And now I ask wherein either of
 the above places, could the freeholders find that
 Mr. Wilkes was eligible by law? For unless
 they can find an act of the legislature which ascer-
 tains, that a man disqualified by the commons is
 still eligible by law, or one that abrogates the sta-
 tutes abovementioned, Mr. Wilkes is still ineligi-
 ble. And when this law is found, I will renounce
 all pretension to justify the conduct of the com-
 mons in this resolution.

The

The freeholders of Middlesex then knew, or ought to have known, that Mr. Wilkes was rendered incapable of being their representative, by all *that* legal authority, precedent, and common usage, which have ever disqualified a member. They should have preconsidered, therefore, that every vote which they could give him must be thrown away ; and that however great the majority of voters on the poll-book might be in his favour, that in the house of commons they must necessarily prove ineffectual. The very imagining, that the voting for a man, incapable of receiving those votes ; and the expecting that he could be their representative, is to suppose, that he who is *disabled* from being a member in parliament, is still *capable* of sitting *in it* ; a contradiction too absurd to want an answer.

These votes then in favour of Mr. Wilkes being wantonly and perversely given, the freeholders of Middlesex have pertinaciously deprived themselves of their right of election, on that single occasion. They have punished themselves for the transgression ; are left to repent of it seven years, and have none to condemn but themselves, and their seducers. They had all the subjects of England from whom to chuse, who are qualified by law ; and they would have no other than Mr. Wilkes, who was not qualified by law, and was then disqualified by the commons. And this exception, of that single subject, in the king's dominions, they denominate a violation of the freedom of their choice. Would the gentleman, who has advanced this opinion, conclude, that if another who was selling his studd of horses, had resolved not to sell one among them, that therefore he who came to purchase had no free choice, because he was debarred the right of buying that single horse ? And when he was informed that it

was the worthlessness of the quadruped, which was the cause of its not being to be sold, would the intended purchaser still complain of his being deprived of his free choice, when he knew the reason? Would not he thank the owner for his integrity in preventing his being imposed on, in an animal of specious appearance, and of internal rottenness.

In this exclamation of violated right by the freeholders of Middlesex, they resemble men who, having voluntarily thrown their treasure into the British ocean, cry to have it up again; and who petition the king, because he is the sovereign of those seas, to redress that grievance, which solely sprang from their own misconduct; and restore to them that wealth which they have wantonly thrown away. Is the attention of a sovereign to be constantly engaged by the clamours and importunity of ignorance and faction?

The gentlemen seem to have forgotten, that all those modes of election which are by prescription, were made by the electors themselves; and that if those who did not make themselves have no power, that then these electors can have no right of election. But prescription implies authority, and they are allowed to possess that right. And yet such hath proved the consequence of things, the commons have frequently resolved the ancient custom to be illegal, and voted another to be lawful. They have reversed the latter, because it was deemed illegal also; and re-established the former as the lawful right, or voted another different from both, to be that alone which was legal. In the transacting these inconsistencies, they have at some times encreased, and given the right of election to those who had it not by law, nor the custom of the borough. At others, they have reduced the number of electors, and taken that right from those

those who were legally possessed of it. All these extensions of power have passed as justifiable, and proved unproductive of tumult or sedition, though these are rights inseparable from a free and fair election.

But the suspending the operation of the votes of the Middlesex freeholders, though they themselves wantonly destroyed their efficacy for seven years, is the subversion of our most important concerns and privileges. And yet it never can afford a precedent, nor even the means of making a member, but whom these electors shall chuse : unless the same refractory spirit of voting for men disqualified, shall again suspend their right of election in succeeding parliaments.

By what art or influence can a minister, working on a house of commons, effect the making of that man the sitting member who has a minority of votes, from this precedent of Middlesex, but in a case exactly similar ? I mean what influential means will he hereby acquire, to those of which he already is in possession ? Surely this is not the first time a minority has had the effect of a majority ; and though at no time when the disparity of numbers was so conspicuous, yet a vote against ten, superior in ten thousand, is equally a violence on the right of election. It is incredible, that men should have espoused an opposition to this resolution of the commons, from a love of liberty, who have made no resistance to those just related. There is something more, and without divination it may be revealed.

It is impossible to determine, whether those who have supported the legality of this disqualification ; or those who have opposed it, are the more feeble and mistaken in their arguments. One advocate, in favour of the conduct of the house, has urged, “ that Mr. Wilkes’s crimes were of that

“ nature, for which he might have stood in the
 “ pillory ; and that by such sentence he might
 “ have been infamous, and could not have been
 “ received as a juror or witness, and, consequently,
 “ ought not to be a member of parliament.”

There is nothing equal to the ignorance of this assertion, excepting the manner in which it is opposed. This man mistakes the scaffold for the pile. In all cases it is the *crime*, and not the punishment, that makes the infamy of the person who is found guilty. According to this doctrine, whoever is placed on the pillory, though absolutely innocent, is as infamous as the most guilty. The nature of the offence effects nothing : it is the place of punishment alone which constitutes the infamy. And yet so false is this assertion, that even in *perjury* it is not the *pillory* which deprives a subject of the right of being a juror or witness, it is the *crime*. And though a perjurer convicted should be sentenced to sit in the speaker's chair, instead of standing in the pillory, he would be equally infamous, and equally rescinded from the preceding rights. Or should he be pardoned by the royal mercy, and escape all corporal punishment, he would, nevertheless, be infamous, and no longer admitted to the privilege of a juror, or a witness : for these are consequences of the law which the king cannot avert. But he that is sentenced to, and suffers the pillory, for a libel against government, loses no right. He suffers his punishment ; and it is the criminality, and not the infliction, which ascertains the nature of the act, and effects the consequence of infamy. A writer may be sett in the pillory for a libel against the most infamous minister. Every word contained in this libel may be irrefragable truth. And shall this man, who has exposed the iniquities of such a minister, and attempted to preserve his country from

from his rapacious hands, be considered in the same light, and attended by like ignominy with him who is guilty of perjury ; who has sworn false, in order to defraud his fellow-subject of life, liberty, or property ? Shall the former be disqualified, for exposing the iniquities of ministers ? The exposition of ministerial malversation, is necessarily connected with the rights of freedom, and indispensably the duty of every representative of the people to perform, provided the truth, and that alone, be held up to view.

The gentleman who has answered this assertion, has said, “ without entering into the consideration “ of the supposed consequences of a punishment, “ which was *not* ordered, I will stop at the fact. “ The court of king’s-bench *did not* sentence Mr. “ Wilkes to the pillory.” But Lord Coke, it seems, asserts, “ that the judgment of the pillory “ doth make the delinquent infamous ; and fine “ and imprisonment do not.” As if a different punishment for the same crime could make the offenders one infamous, the other not. And for the above reason, the gentleman says, that “ the fine “ is perhaps higher, and the imprisonment longer, “ on the account of the punishment of the pillory being omitted ?” Is it not astonishing how men can deliver themselves with such ignorance of the things on which they write, or with such resolution to misrepresent them ?

There are two persons now living, one of whom stood in the pillory, paid a small fine, and was three years imprisoned for a libel : in which the charges against the then ministers have never been attempted to be disproved, nor the truth denied ; and which contributed, not a little, to drive them from their power and mischief ; and to place that minister near the throne, to whom all the successes of the late war have been attributed. There is

yet another, who, for a libel printed in the London Evening Post, stood in the pillory, paid a fine of five hundred pounds, and was imprisoned for two years. And yet Mr. Wilkes, who was found guilty of four libels, one against his king, and three others, impious and obscene, hath received the sentence of two years imprisonment only, and to pay one thousand pounds; and as, on the account of this *long* imprisonment, and *large* fine, he was not sentenced to the punishment of the pillory, he is, therefore, as that writer declares, *not* infamous. Whatever be the condition of the others, one of these things must certainly be true. If Mr. Wilkes who, for each crime, was fined at the rate of two hundred and fifty pounds, and doomed to six months imprisonment, received that punishment which was adequate to his offences; tho' three of them were against religion, without the support of which no government can subsist. He that, for one libel against ministers, without *one* falsehood, was sentenced to fine, three years imprisonment, and to stand in the pillory, received a greater punishment than his crime deserved. Or if the latter received only what was due to his offence, then Mr. Wilkes has been treated with unexampled lenity for four crimes, three of which are singly of a more indefensible nature. Were it true, that Mr. Wilkes, by not being placed in the pillory, is thereby not rendered infamous, that circumstance can never be a just argument for his not being disqualified for his offence. Even this very omission of that punishment, is a reason for his receiving something adequate thereto from the commons. For they certainly distinguished, that the crime, and not the punishment, can alone make an offender infamous. Instead, therefore, of being four times exposed in the pillory, for four offences, of which he was legally found guilty; instead
of

of eight years imprisonment, for those four crimes, and two thousand pounds fine; or twelve years imprisonment, and twenty pounds fine; instead of giving bond for his good behaviour for eight and twenty years, he has been sentenced to pay a fine of one thousand pounds for all his crimes, imprisoned two years, and to give bail for seven. Which then is the sentence of mercy, that which Mr. Wilkes received accompanied with the disqualification of sitting in parliament for seven years, or the remaining eight or twelve in prison together with the other concomitant circumstances which I have recounted? It seems indeed, therefore, to appear that the court of king's bench were thus unequal in their sentences, respecting the persons to whom I refer, and Mr. Wilkes, because that court concluded, that a vote of disqualification, from sitting in parliament, would compensate for that disparity of punishment between the former libellers and him; and therefore, convinced that such a resolution would in justice follow, they left the commons to supply that deficiency, and chose not to overload that criminal with punishment, though he had so egregiously offended. If this be no solution of the difference in the preceding sentences, what are the reasons why four times the offence should not receive one fourth of the punishment which other men received? But whatever may have been the intention of the court of king's bench, I rejoice that clemency has gained a stronger footing in the days of his present majesty than in those of his ancestors; though it is impossible not to wonder at the exclamation against the cruelty of Mr. Wilkes's fate. The arguments which this sentimental freeholder has brought to prove that Mr. Wilkes is not infamous, and ought not therefore to be disqualified by the commons, are diametrically opposite to all he intended to evince.

Were

Were the reasonings of these writers to be considered as valid and satisfactory, let me now observe what a laudable set of principles they will produce. They assert, that nothing but an act of the legislature could disqualify Mr. Wilkes, and that the united resolution of the lords and commons, has no more legislative power than either of them singly; because, to make it a legislative act, there must be added the royal assent. I presume then that the same circumstances, which can characterise a legislative act in this case, are equally requisite in all others. And now I would know by what rightful authority a parliament, called together by a prince, who was *not* then our king, and by writs *not* issued by the prince who *then was* sovereign, could lawfully meet together? And then by the authority of the lords and commons, so assembled, without the assent of their sovereign, expel *him* from the realm, disqualify *him* from sitting on the throne, and place another prince, not next in succession, in his place? The rectitude of those resolutions, which effected this new and unprecedented revolution, these advocates of Mr. Wilkes are violent in defending. I agree in this opinion; but then I cannot reconcile how the lords and commons can disqualify a lawful sovereign who has all the executive power in his hands, and without whose assent no act can be legislative; and yet *not* disqualify John Wilkes, Esq. elected in full contradiction to the laws of the land, and the laws of parliament. King James, indeed, was a very undeserving sovereign, he merited his fate. Is Mr. Wilkes so meritorious a man, that every usage of the commons, and the statutes of the realm, must be rendered impotent to make him a member of the commons? The absurdity is too enormous to admit of a palliative: and yet, notwithstanding this, the subjects who had sworn allegiance

giance to king James; who saw not sufficient cause to disqualify that prince; and who attempted to restore him to the throne, were treated and put to death as rebels: the advocates of John Wilkes, Esq. stile themselves the *most faithful* and *best subjects* of their sovereign, and most strenuous friends to the constitution. And yet at this moment they are straining every nerve to obtain a dissolution of parliament, because, that parliament hath disqualified, according to all that is constitutional and legal, the said John Wilkes.

These men who roar for Revolution principles, and the right of disqualifying kings, by acts which they themselves agree are not legislative, and therefore inobligatory, are, in fact, the supporters of those very principles, in the case of Mr. Wilkes, which they decry and execrate in the case of king James. Black is white, and white is black. Number has no quantity when against them, and *no* quantity has the full effect of number when it is for their advantage. The commons can do nothing against Mr. Wilkes, because, as they say, he is eligible by law; but it can do every thing against a king, who was not disqualified by law. A Jacobite is a most detestable being, who denies that power in the commons respecting kings; and a man who avows, maintains, and supports the illegality of a similar exertion of authority against Mr. Wilkes, is a patriot. But in fact, a Jacobite and a Wilkite, maintaining the same principles, are equally condemnable; and the latter the most justly obnoxious to that condemnation as their object is more despicable.

There remains yet another reason which has been offered against the parliamentary proceedings in the case of Mr. Wilkes. It is, that he has been *twice* punished by the house of commons for the same crimes. And the printed speech of a right

honourable gentleman declares, " that there is no
 " rule more sacred in the jurisprudence of this
 " country, than that a man, once acquitted or
 " condemned, shall not be tried or punished again
 " *by the same judicature* for the same offence."

The law, indeed, declares all this, and more. It pronounces, that no person, once tried, whether acquitted or condemned, shall be subjected to another trial for the same offence *in any court of judicature whatever*. For to be exposed to a second trial after he was found *not guilty*, would be next to being *not* acquitted; as he might, by being subjected to another trial, be still found *guilty*: and to be again tried after condemnation, might prove to be an *acquittal*, or a *second* punishment. Neither of these are consentaneous with the idea of justice. Because, in each case in this country, the courts of judicature are adequate to the importance of, and to the deciding those causes which come before them; and therefore a man once acquitted, is not to risque his life, nor one condemned to avoid his sentence, by a second trial, however innocent he may be in the latter case. The prerogative of the crown is as a court of equity. It intervenes between those hardships of the law, which, in particular instances, may arrive and operates in mercy towards the convicted. The right honourable gentleman, therefore, to whom this speech is ascribed, if it be his, by adducing this maxim of the law, hath, I am apprehensive, notwithstanding his distinction of the same court, proved too much. For, by his own arguments, does he not stand self-condemned of that very misconduct, which he imputes to those who, a second time, expelled Mr. Wilkes?

Mr. Wilkes was first expelled the commons, during the time in which that gentleman, to use his own expressions, *had the honour of being intrusted*
 4 *with*

with the executive powers of the state. If this expulsion was then a punishment, why was he, when expelled, again brought to answer for the same crimes, tried, and condemned to a second punishment, by the court of king's bench, during the time in which the executive powers of the state were in the hands of this gentleman?

If he would obviate the import of this question, by answering that the house of commons is *not* a court of judicature, and therefore that Mr. Wilkes was tried, condemned, and punished by the court of king's bench, according to law; does it not follow that a second expulsion from the commons was no infringement of the preceding right of a British subject; and no legal punishment, because it was done in that house which is not included in the definition and idea of a court of judicature?

If he allows the house of commons to be a court of judicature, and the resolution of the last parliament, which expelled Mr. Wilkes, to be consecutive of a fair discussion, and productive of a punishment; then, according to his own reasoning, the trial in the court of law, the sentence, and the suffering, are all illegal, and the violation of those very rights and privileges, which he complains of and opposes in his speech as committed by others, were transacted by himself, whilst he was minister.

In fact, his error lies in the supposing that *another* court of judicature can try, acquit, or condemn a man who has been once tried, and either acquitted or condemned in a preceding court. Otherwise, from the tenor of the whole speech, he must have been of a contrary opinion to what he has now published. However mistaken he may be deemed in his present opinion, he was perfectly right in his former conduct, as a minister and a member of the house of commons. He voted to expel Mr. Wilkes, not as a punishment for his crimes, but as a mem-

her whose offences had rendered him unworthy of sitting as a legislator, and to divest him of that privilege of parliament, which would have prevented his being punished by imprisonment or other lawful means; for it had been experimentally proved, that the lord chief justice of the common pleas had set him at liberty, because those offences were not such as divested him of his parliamentary privilege: and that same privilege which had set him free would have prevented his being taken into custody or confined in prison after condemnation, had he remained in parliament. It is true indeed, that a vote of the commons, on this occasion, had been passed, that the privilege of parliament did not extend protection to the offence of libels; but as by the ancient law of parliament nothing but treason, felony, and breach of the peace were beyond the limits of parliamentary privilege, there was great reason to suspect that a vote, so passed, might not be of sufficient authority to justify the detention of Mr. Wilkes in prison, after a sentence of a court of law. He was therefore with great justice, and equal prudence, deprived of that privilege, and placed on that level of right which is in common to all the subjects of Great Britain.

As a minister, to whom the executive power of the state was entrusted, the right honourable gentleman behaved with that dignity, and that duty, which become the servant of his king, and the supporter of the legislature. He prosecuted, according to law, that man who had libelled his king, and notoriously offended against religion and the decency of public manners, by a publication of impiety and obscenity. Mr. Wilkes was expelled therefore, not as a punishment, but because the character of a legislator ought not to permit the presence of any man so offensive to be a member of the British senate; and he was tried, condemned,
and

and sentenced, in the court of law, because a person so atrociously guilty should not escape that infliction which no government, equitably administered, can permit to remain unpunished.

For the same reasons, the present house of commons have expelled and disqualified the same criminal; that, by the law of parliament, Mr. Wilkes might not supersede the laws of the realm, and escape the verdict of the jury, and the sentence of the judges. The second expulsion from the commons was therefore no second punishment for the same offence, because his first expulsion was neither in fact, nor ought to be deemed a punishment. It was exactly coincident with the conduct of the honourable gentleman, who was minister at the time of Mr. Wilkes's first expulsion. It was intended to render that decision of the laws, which was given against Mr. Wilkes, effectual: and not to be evaded by parliamentary privilege. And there it had rested, had not the violence of faction precipitated the freeholders of Middlesex to re-elect a man expelled. Disqualification therefore was the sole expedient which could terminate their perverseness; and Mr. Wilkes was disqualified by the law of parliament, that he might suffer the sentence of those laws which he would otherwise have escaped. The sentence of the court of king's bench was carried into execution by the very means which the former parliament had resolved to be just. By being first expelled, he was only made liable to be punished by an equitable adjudgment of the laws and his peers. By the second, he was only preserved in that state of condemnation to which he was sentenced, that the most lenient of all punishments might not be eluded by the privilege of parliament. The honourable gentleman who was then minister, and the present ministry, have behaved with equal justice and becoming

coming judgment in the conduct of this affair. The former differs from the latter only in the conceiving the first expulsion to be a punishment, and the second a repetition of it; and in imagining that a person once tried, acquitted, or condemned, may again be brought to trial in another court, for the same offence. And if the arguments which I have offered shall be found to bear the face of truth, I am persuaded he will not deny his assent to them.

Such then are the real state and strength of the principles, positions, and arguments of those writers, who have condemned the disqualification of Mr. Wilkes, as contrary to the laws of the land. And yet one of these advocates, whilst he was declaiming against those who had thus robbed their country of its supremest liberty, was at that instant the cause that one subject, by the law of parliament, was held in Newgate, and another brought before the house to ask him pardon: both which are freemen equal to himself. And these things were transacted without the least legal process, and in direct opposition to Magna Charta. And though that charter was granted before the existence of the house of commons, it has been so repeatedly confirmed by the whole legislature, since the constitution received the addition of that house, that it is undoubtedly a statute-law.

Patriotism, thou shalt live for ever! if such inconsistencies can make a patriot. Freedom shall abound, where men assume that power, which they themselves agree the laws deny, and refuse those rights which the laws have granted. Away then with all those clamours against violated right, and declamation in defence of liberty, where the practice of such patriots is in direct contradiction to the principles they profess.

Should

Should this resolution of the commons be repealed, and the position be adopted, that *in every unprecedented case there is no authority in the house to disqualify a member*, to what will then the power of ministers be raised? Let but the members of the counties, cities, and boroughs, which are, or are not, in the court interest, be returned by methods yet unprecedented, and not expressly prohibited by law; and innumerable are the cases which may be so imagined; and all those candidates, however profligate and improper, shall be our representatives. For, by their own arguments, the cases being new and unexampled, they are not cognizable in the house of commons.

A minister, therefore, whose motives are the diminution of British liberty, must wish to see his endeavours foiled; the vote of disqualification abrogated; and the pretensions of these defenders of our rights established. Then would the latter be defeated by their own conquest, and enslaved by the accomplishment of their pretensions to establish freedom. Administration might then securely laugh at that impotence to which their enemies had reduced themselves; bid defiance to their menaces; dissolve the parliament; exclude one half of those who now oppose them; and stride triumphant over the columns of the constitution, which these patriots had shaken down.

Defeated in their designs of freeing Mr. Wilkes from prison, the Middlesex freeholders now pretend that it is the general cause of freedom of election for which they are contending; and, despairing to have the resolution repealed, by this house of commons, which hath disqualified their hero, they now petition the king to dissolve the parliament, in order to elect him in the next. They claim that privilege which was established by the Bill of Rights. The right to petition their sovereign.

vereign. In these, which they have presented, they implore a dissolution of parliament, expressly on the account of that resolution by which Mr. Wilkes has been disqualified.

But do these men conceive that a right of petitioning, in them, is an obligation of its being complied with by their sovereign? Were his majesty so circumstanced, a petition would be a demand not to be refused, and the people kings. And should two things diametrically opposite be requested by the people, how could the prince comply with both? But, in this instance, they have conducted their petitions in such a manner, that his majesty cannot constitutionally pay the least attention to them. I have already mentioned the opinion of Sir Edward Coke, which is the opinion, also, of all those who are acquainted with our constitution; and I here repeat it. "By law
"and custom of parliament, the king *cannot* take
"notice of any thing said or done in the house of
"of commons, but by the report of the house of
"commons?" These petitions, therefore, unanimously representing an affair done and transacted in that house, proceeding from the tumultuous spirits of a very few people, compared with the whole nation, cannot be attended to by his majesty, without intruding on the rights of the commons and the constitution itself. Yet this is what they ask in defence of liberty. It was this very object of their petitions for liberty, that was so justly complained of in the reigns of the Stuarts, as a breach of it; when those sovereigns interfered in the business of the commons; seized and imprisoned their members, and brought confusion on the state.

Nor is the dissolution of the parliament, prematurely effected by the prerogative royal, an act that is conformable to the Bill of Rights. By
the

the first article of that bill it is declared, " that the
 " suspension of laws by royal prerogative, with-
 " out consent of parliament, is illegal ;" and yet
 this suspension of the law, which makes the parlia-
 ment septennial, is the very boon for which they
 petition. I well know that by the act, which Sir
 Robert Walpole obtained when he was minister,
 and which passed with such inobservance by those
 nonconformists ; that act by which that minister,
 by one vote, re-elected every member of that house,
 and converted a triennial parliament to a septennial,
 without one suffrage of the people. That act leaves
 to his majesty his right of dissolving the parliament
 when he pleases. But, then, is not the dissolution
 of it repugnant to the spirit, and even to the let-
 ter of, the Bill of Rights ? Were not the Stuarts
 exclaimed against, and abhorred for dissolving the
 parliaments when they pleased ? And yet this is the
 practice which these supporters of right are labour-
 ing to renovate. Thus, both in the manner of
 their petitioning as well as in the object of it, these
 most faithful subjects of their sovereign are im-
 ploring him to undo himself.

Yet these men denominate that clamour to be
 the voice of the people, which is no other than the
 exclamation of a factious populace. And pronounce
 that opinion to be the sense of the nation which is
 subscribed by the minority of some few counties ;
 and, even in these, obtained by the manifest seduc-
 tion of some designing men. These, with the pre-
 ceding reasons, and a multiplicity of others, form
 the justest cause for rejecting their petitions.

Concessions to the factious, have proved, by the
 experience of all ages, to be that hot-house which
 hath ripened discontent into rebellion. What is
claimed by the people, and granted by the king, and
 what the constitution denies, is considered as ex-
 torted by their importunity and daring ; and not as
 conceded

conceded by the royal beneficence. By these means the excess and insolence of their demands encrease and become insatiable ; but with the destruction of all that law, justice, and execution of government which should oppose them.

Is there a man entitled to the claim of reason who can think this case of Mr. Wilkes to be a national cause ? Is the king to be pestered with petitions, to the contents of which he is forbidden, by the constitution, to listen, till all the desperate, the ambitious, the rebellious, and the needy shall be satisfied ? Or can that æra ever arrive ? Were those very men in power who now inflame these petitioners, would *they* advise his majesty to accede to that very request which they now encourage to be made him ? Is there an individual of the realm who believes they would ? Must then this harassed kingdom be changing parliaments, when the ministers have acquired permanency, at the direction of the populace and their incendiaries ? And must his majesty follow the dictates of those whose understandings are the least enabled to judge of the propriety of an alteration, the talents of those whom they clamour to have dismissed, and of those whom they struggle to have admitted ? Must the industry and labour of the artisans and manufacturers of the kingdom be suspended and lost in drunkenness, and riot, during a canvass for new members, because Mr. Wilkes has been disqualified, according to the laws, customs and usage of this constitution ?

And now I presume it may be manifest, that the power of judicature is *not* the only power which the commons possess, and that they never have been nor are obliged to proceed judicially, and determine according to law ; but that it necessarily includes the power of making laws also, respecting those matters relative to themselves and their elections.

And

And I appeal to the very elements of parliamentary authority, that the commons must possess the right of legislation, and that they are not judges only to interpret and apply the law, because the law of parliament was made by them, as sole legislators in their own cases. And to the proof of this I call in every known example of the known law of parliament, to ascertain, that the power of the house of commons, in all their privileges and rights, and in the instance in question, is not bound by the law of the land, nor by the common right of the subject; but that it must be left to the will of the house, or to any arbitrary discretion of their own.

I summon up the first and fundamental principles of the constitution, which proclaim with a loud voice, that the house of commons *cannot* but have that power attributed to them; and that the most essential ideas of the being of a parliament, the justest notions of the unalterable law of parliament, include and evince it to be within the true scope of their jurisdiction and authority.

What then is the cause of this atrocious clamour and riot in the streets, in support of such unconstitutional demands? It is that spirit of rebellion again broken loose, which incited Cromwell and his fanatics to take arms against their king, and bring not only him, but the constitution itself, both ecclesiastical and civil, to the block. It now rages in hearts invenomed with the poison of similar passions. It maddens in the brain of those, who by principle are equally malignant and destructive. But by a perseverance of that vigorous spirit with which it is now opposed, it will be seen expiring by the hands of the public executioner.

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